

# **CONSTITUTION OF THE SEMINOLE NATION OF OKLAHOMA INDEX**

CONSTITUTION of the SEMINOLE NATION of OKLAHOMA INDEX ..... i

CONSTITUTION of the SEMINOLE NATION of OKLAHOMA ..... i

Adopted March 8, 1969, As Amended February 25, 1989, As Amended December 14, 1991 As Amended September 20, 2008 As Amended July 13, 2013 .....	i
PREAMBLE .....	i
ARTICLE I - NAME.....	i
ARTICLE II - MEMBERSHIP.....	i
ARTICLE III - CHIEF AND ASSISTANT CHIEF .....	i
ARTICLE IV - GENERAL COUNCIL .....	ii
ARTICLE V - POWERS OF THE GENERAL COUNCIL.....	iii
ARTICLE VI - MEETINGS OF THE GENERAL COUNCIL.....	iv
ARTICLE VII - ORDER OF BUSINESS .....	iv
ARTICLE VIII - DUTIES OF OFFICERS .....	v
ARTICLE IX - REMOVAL AND THE FILLING OF VACANCIES .....	v
ARTICLE X – ELECTIONS (As amended, February 25, 1989.) .....	vi
ARTICLE XI - OATH OF OFFICE.....	vii
ARTICLE XII - BILL OF RIGHTS.....	vii
ARTICLE XIII - AMENDMENT.....	viii
ARTICLE XIV - ADOPTION.....	viii
ARTICLE XV - TERRITORIAL JURISDICTION.....	viii
CERTIFICATION OF ADOPTION 1969.....	x
APPROVAL OF 1969 CONSTITUTION.....	x
CERTIFICATION OF ADOPTION 1989.....	x
APPROVAL FOR 1988 AMENDMENTS .....	xi
CERTIFICATION OF ADOPTION 1991.....	xi
APPROVAL FOR 1991 AMENDMENTS .....	xii

**CONSTITUTION  
OF THE  
SEMINOLE NATION  
OF  
OKLAHOMA**

**Adopted March 8, 1969,  
As Amended February 25, 1989,  
As Amended December 14, 1991  
As Amended September 20, 2008  
As Amended July 13, 2013**

**PREAMBLE**

We, the members of the Seminole Nation of Oklahoma, in order to promote justice, to continue cooperation with Federal, State and local governments, to encourage the general welfare, to safeguard our interests, to promote social, educational and economic opportunities for our children and for ourselves, and understanding this to be the democratic way pertaining to democracy and self-government by the people of the Seminole Nation of Oklahoma, do hereby ordain and establish this constitution.

**ARTICLE I - NAME**

The name of this body shall be "The Seminole Nation of Oklahoma."

**ARTICLE II - MEMBERSHIP**

The membership of this body shall consist of all Seminole citizens whose names appear on the final rolls of the Seminole Nation of Oklahoma approved pursuant to Section 2 of the Act of April 26, 1906 (34 Stat. 137) and their descendants. An enrolled member of another Indian tribe shall not be eligible for membership in the Seminole Nation of Oklahoma.

**ARTICLE III - CHIEF AND ASSISTANT CHIEF**

Section 1. The executive authority of the Seminole Nation of Oklahoma shall be vested in a Chief and Assistant Chief.

Section 2. Any member of the Seminole Nation of Oklahoma who is at least 35 years of age and who possesses no less than one-quarter degree of Seminole Indian blood may be eligible for the office of Chief and Assistant Chief. No person who has been convicted of a felony by a court of competent jurisdiction shall be considered eligible for these offices until either pardoned or five years have passed since release from confinement.

Section 3. The Chief and Assistant Chief shall be elected for a term of four years pursuant to the provisions of Article X of this constitution and shall serve until their successors have been elected and installed. (As amended, December 14, 1991.)

Section 4. The Chief shall appoint, dissolve or remove subordinate committees and representatives and delegates to inter-tribal bodies subject to the approval of the majority of the General Council.

Section 5. The Chief shall preside over all meetings of the General Council and exercise any authority delegated to him by the provisions of this constitution. He shall have general supervision over the affairs of the General Council and shall perform all duties appertaining to the office of chairman. He shall sign all official papers on behalf of the Nation when so directed by the General Council. He shall not vote at Council meetings except in case of a tie.

Section 6. The Assistant Chief shall assist the Chief when called on to do so, and in the absence of the Chief shall preside and when presiding shall have all privileges, duties, and responsibilities delegated to the Chief. In the absence of the Secretary of the General Council, the General Council will appoint a temporary Secretary. In case of the death or resignation or removal of the Chief, the Assistant Chief shall succeed at once to the office of Chief, subject to approval and confirmation as provided in Article IX, Section 3 of this constitution. (As amended, February 25, 1989.)

#### **ARTICLE IV - GENERAL COUNCIL**

Section 1. The legislative body of the Seminole Nation of Oklahoma shall be known as the General Council and shall consist of two (2) band representatives elected from each of the following fourteen (14) Seminole bands.

Tusekia Harjo; Tallahassee; Mekusukey; Thomas Palmer; Fushutche; Rewalke; Ceyvha; Eufaula; Hvticyivlke; Hecete; Nurcup Harjo; Ocese; Dosar Barkus; and Caesar Bruner.

There must be at least ten (10) members of a band to constitute band status. A band with less than ten (10) members will have no voice in the Council.

Within 90 days from the approval date of this amendment, each band shall submit to the General Council written by-laws which shall describe how the band is governed. A band which has not submitted written by-laws shall have no voice in the Council. (As amended, February 25, 1989; As amended by July 13, 2013.)

Section 2. The General Council shall appoint for so long as it desires a secretary from within or without its membership. Any appointee from without the elected membership of the General Council shall not be eligible to participate in any business before that body unless the General Council so desires.

Section 3. Any member of the Seminole Nation of Oklahoma who is at least 18 years of age and who possesses no less than one-quarter degree of Indian blood (this provision of degree of blood shall not apply to Freedman Council members) is qualified to sit on the General Council when

duly elected pursuant to this constitution. No person who has been convicted of a felony by a court of competent jurisdiction shall be considered eligible for any position on the General Council or any appointment by that body until either pardoned or five years have passed since release from confinement. In the event any question should arise regarding the qualifications of any band representative, candidate for office or appointee, the decision of the General Council shall be final.

Section 4. All band representatives of the General Council shall be elected to serve a term of four years or until their successors have been duly elected and installed. All band representatives and the officers serving on the General Council may succeed themselves in office.

Section 5. All members of the General Council, appointees and employees of the Nation shall be paid in accordance with a duly adopted ordinance of the General Council. Unless otherwise provided for in this constitution, no enactment of the General Council shall be considered valid unless supported by a majority of those voting in a legal meeting.

## **ARTICLE V - POWERS OF THE GENERAL COUNCIL**

The General Council of the Seminole Nation of Oklahoma, subject to any restrictions contained in the Constitution and laws of the United States, shall have the power to speak or act on behalf of the Nation in all matters in which the Nation is empowered to act. The General Council shall exercise, subject further to any limitations imposed by this constitution, the following powers:

- (a.) To promote public health, education and charity and such other services that may contribute to the social and economic advancement of the members of the Seminole Nation of Oklahoma.
- (b.) To negotiate with Federal, State and local governments and others on behalf of the Nation.
- (c.) To prevent the sale, disposition, lease or encumbrance of any land or interest in land belonging to the Seminole Nation of Oklahoma or reserved for the benefit of such Nation.
- (d.) To manage and lease or otherwise deal with Tribal lands and communal resources in accordance with law.
- (e.) To prepare the annual budget request and supplements thereto, to administer any funds within the control of the Nation and to make expenditures from available funds for Tribal purposes. All expenditures of Tribal funds within the purview of this paragraph shall be authorized by resolution duly enacted by the General Council and the amounts so expended shall be a matter of public record open to the members of the Nation at all reasonable times.
- (f.) To enter into any contract in behalf of the Nation in conjunction with any activity that will further the well-being of the members of the Nation.
- (g.) To employ legal counsel.



- (h.) To borrow money from any source and pledge or assign chattels or future Tribal income as security therefore, subject to any restrictions imposed by any statutes.
- (i.) To exercise any powers not specifically set forth in this article which at some future date may be appropriately delegated to the General Council. (As amended, February 25, 1989.)
- (j.) To establish, levy and collect taxes within the territorial jurisdiction of the Seminole Nation of Oklahoma. (As amended, July 13, 2013)

## **ARTICLE VI - MEETINGS OF THE GENERAL COUNCIL**

Section 1. Regular meetings of the General Council shall be held on a day established by the Council in March, June, September, and December of each calendar year, one of which shall be designated the annual Tribal meeting at which the Chief shall make an annual report: Provided, that if the established meeting date falls on a holiday, the meeting shall be held on the same day of the following week. Such meetings shall convene at 10 a.m. The Chief may call a special meeting of the Council at any time he thinks it-necessary. The Chief shall be required to call such a meeting within ten (10) days upon receipt of a request in the form of a petition signed by at least a fifteen (15) members of the General Council: Provided, that no special meeting shall be called except on matters of serious concern to the General Council. Notice of regular and special meetings shall be given at least ten (10) days in advance to all members of the General Council and shall contain the time, place, and purpose. In case of an emergency, the ten (10) day notice period may be waived. Such notice shall also be published in at least one (1) prominent newspaper within Seminole County and notices posted in proper places. By ordinance the General Council shall provide details on how the wavier will be accomplished and the places for posting of the notices. (As amended, February 25, 1989.)

Section 2. The official meeting place shall be designated by the General Council. All meetings shall be opened to the members of the Seminole Nation of Oklahoma, and no official business may be transacted by the General Council at any time in the absence of a quorum which shall consist of a fifteen (15) voting band representatives and either the Chief or Assistant Chief, or Temporary Chairman. (As amended, February 25, 1989.)

Section 3. In the event the Chief and/or Assistant Chief refuses or is unable to call or chair a regular or special General Council meeting, a temporary chairman appointed by the General Council shall preside over the meeting of the General Council and the General Council shall be able to conduct official business. The Temporary Chairman shall preside for that one meeting only and shall sign all official papers arising from that one meeting only when so directed by the General Council. The General Council may appoint the Temporary Chairman from within the General Council or from the voting membership of the Seminole Nation. The Temporary Chairman, if not a member of the General Council, shall not be allowed to vote on official business. (As amended, February 25, 1989.)

## **ARTICLE VII - ORDER OF BUSINESS**

Section 1. The order of business at any regular or special meeting of the General Council shall be as follows: Provided, that it may be suspended for any meeting by the General Council.

1. Call to order.
2. Roll call and prayer.
3. Reading of minutes of last meeting.
4. Unfinished business.
5. Reports of Committees.
6. New business.
7. Prayer and adjournment.

Section 2. The General Council may by appropriate ordinance adopt such rules and regulations as it thinks desirable in carrying out the order of business.

### **ARTICLE VIII - DUTIES OF OFFICERS**

The Secretary shall cause to be prepared all minutes, resolutions and ordinances enacted at all meetings and distribute copies, by mail if feasible, to the members of the General Council and to the Area Office. The Secretary shall cause to be maintained files, records, and correspondence of the General Council in an orderly manner for the convenience of the General Council and exercise such other duties as may be specifically delegated to the Secretary. The Secretary shall attend to the giving and serving of all notices of the General Council as required by this constitution. Until the General Council by ordinance directs otherwise, the depository of the Council's records and enactments shall be in the Tribal office in Wewoka, Oklahoma, such documents to become the permanent records of the Seminole Nation.

### **ARTICLE IX - REMOVAL AND THE FILLING OF VACANCIES**

Section 1. The General Council may by an affirmative vote of nineteen (19) members remove any officer or band representative from office who fails to carry out his or her responsibilities or who is found guilty in any court of competent jurisdiction of a misdemeanor involving dishonesty, or for any gross neglect of duty or misconduct reflecting on the dignity and integrity of the General Council. No vote taken, however, shall be considered valid unless the individual so charged shall have been given a written statement containing the charges made against him or her at least ten (10) days before any meeting of the General Council and has been afforded an opportunity to answer, before the General Council, and all of the written charges. (As amended, February 25, 1989.)

Section 2. The General Council shall automatically declare vacant the seat of any member who dies, resigns, is found guilty of a felony in any court of competent jurisdiction, or who fails or refuses to attend two regular meetings in succession unless excused by the General Council.

Section 3. In case of the death, resignation or removal of the Chief, the General Council at its next regular meeting shall confirm the Assistant Chief as Chief. In the case of the death, advancement, resignation or removal of the Assistant Chief, the General Council at its next

regular meeting shall by an affirmative vote of fifteen (15) of its members select a qualified member of the Seminole Nation of Oklahoma to fill the vacancy. It shall be the responsibility of the bands to fill, pursuant to Seminole tribal customs, any vacancy which may occur in their representation. Any member of the General Council seated pursuant to this section shall serve only until the completion of his or her predecessor's unexpired term. (As amended, February 25, 1989.)

Section 4. In case of the death or resignation or removal of both the Chief and Assistant Chief, the General Council shall appoint the Chief and Assistant Chief until a special election is held if such an election is deemed necessary by the General Council. The Chief and Assistant Chief appointed or elected pursuant to this section (Section 4) shall serve only until the next general election as provided for in Article X, Section 2. The appointed Chief and Assistant Chief shall have all powers granted an elected Chief and Assistant Chief under this constitution. (As amended, February 25, 1989.)

## **ARTICLE X – ELECTIONS** **(As amended, February 25, 1989.)**

Section 1. Every member of the Seminole Nation of Oklahoma as defined in Article II of this constitution shall be eligible to vote in any general or special election: Provided, that they are at least 18 years of age. Voting shall be by secret ballot.

Section 2. All elections (subsequent to the first election held under this constitution) of Council members, Chief and Assistant Chief, shall be called -pursuant to the provisions of this article: Provided, that the date of elections and any additional rules and regulations not inconsistent with this constitution, shall be established in an ordinance duly enacted by the General Council, and that all future election dates shall be no more than four (4) years apart.

Section 3. The Chief shall appoint, subject to approval of the General Council, an election board consisting of three members. The election board shall conduct all regular and special elections for Council members, Chief and Assistant Chief. The election board shall be charged with the responsibility of maintaining a list of registered and qualified voters, register persons eligible to vote, determine the eligibility of all candidates for office, and for counting ballots. The election board shall also be charged with the responsibility of determining the number and location of voting places. The election board shall elect from among its members a Chairman and a Secretary. The election board may appoint as many assistants as it deems necessary to conduct the elections.

Section 4. All candidates for office shall file with the election board and pay the fee prescribed by the General Council.

Section 5. Any person possessing the qualifications for Chief or Assistant Chief as set forth in Article III, Section 2 of this constitution may file for the office of Chief or Assistant Chief. Election of Chief and Assistant Chief shall be at large. No candidate for Chief or Assistant Chief shall be considered elected unless he or she has received the majority of the votes cast.

Section 6. Any person possessing the qualifications for General Council members as set forth in Article IV, Section 3 of this constitution, may file for the office of council member from his or

her band. Councilmen shall be elected by a plurality of the votes cast. A tie vote for councilmen shall be decided by their band. Election of council members shall be by band and all qualified voters shall be entitled to cast one vote for each seat his or her band has on the General Council to be filled.

Section 7. If a candidate for Chief or Assistant Chief does not receive the required majority of votes cast, a run-off election shall be held four weeks after the first election, and subject to all the rules and requirements of a regular general election. In the event of a run-off election, only the names of the two candidates with the highest number of votes shall appear on the ballot.

## **ARTICLE XI - OATH OF OFFICE**

The newly elected Chief, Assistance Chief and members of the General Council shall be installed and take office at the first regular meeting following their election. The installation of the newly elected Chief, Assistance Chief, and members of the General Council elected at the first election held pursuant to this constitution shall be performed by the Commissioner of Indian Affairs or his authorized representative. Thereafter, installation of newly elected officials of the Seminole Nation of Oklahoma shall be performed by the outgoing Chief or a person appointed by him. No official shall assume office under this constitution until he or her shall take the following Oath of Office:

“I \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully execute the office of \_\_\_\_\_, and will to the best of my ability preserve, protect and defend the Constitution of the United States, and the Constitution of the Seminole Nation of Oklahoma.” (As amended, February 25, 1989.)

## **ARTICLE XII - BILL OF RIGHTS**

Section 1. Each Seminole Indian citizen by blood of this body shall be entitled to membership in a Seminole Indian Band. Each Seminole Freedman citizen of this body shall be entitled to membership in a Freedman Band. Members of the Seminole Nation of Oklahoma shall belong to their mother's band: Provided, that in the event a member's mother is not a member of the Seminole Nation, such member shall be entitled to membership in the band of such member's father. One must remain in his own band. No member shall be entitled to belong to more than one band at any one time. All members shall be guaranteed equal economic opportunities and freedom of association and assembly.

Section 2. Nothing in this constitution shall be interpreted in a way which would change or adversely affect the rights and privileges the members of this body have as citizens of the United States. (As amended, February 25, 1989.)

Section 3. The individual vested property rights of any member of the Seminole Nation of Oklahoma shall not be affected in any way whatsoever by the provisions of this constitution without the consent of such individual member.

### **ARTICLE XIII - AMENDMENT**

Section 1. This constitution may be amended by a majority vote of the qualified voters of the tribe who vote in a special election called for that purpose by the Chief of the Seminole Nation of Oklahoma pursuant to rules and regulations the General Council shall prescribe. It shall be the duty of the Chief to call such an election upon the request of fifteen (15) members of the General Council. (As amended, September 20, 2008.)

Section 2. A notice in the form of a resolution duly adopted by the General Council as to the time and place of any election to adopt or reject any proposed amendment must be given not less than sixty (60) days before election day. Such notice must include the full text of any proposed amendment and must appear subsequently at fifteen (15) day intervals in at least two (2) prominent newspapers published within Seminole County.

### **ARTICLE XIV - ADOPTION**

This constitution when ratified by a majority of those qualified to vote in a special election of the Seminole Nation of Oklahoma pursuant to rules the Council may prescribe, shall be submitted to the Commissioner of Indian Affairs and shall become effective upon the date of approval.

### **ARTICLE XV - TERRITORIAL JURISDICTION**

The territorial jurisdiction of the Seminole Nation of Oklahoma shall be within the geographical boundaries established by the Treaty of March 21, 1866, 14 Stat. 755, entered into by the Seminole Nation of Oklahoma and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries, owned in fee by the Seminole Nation of Oklahoma or held in trust by the United States on behalf of the Seminole Nation of Oklahoma. All of said property subject to the territorial jurisdiction of the Seminole Nation of Oklahoma, both real and personal, shall be exempt from federal and state taxation, when not inconsistent with federal law. (As amended, December 14, 1991)

### **ARTICLE XVI – COURTS**

Section 1. The judicial power of the Seminole Nation of Oklahoma shall be vested in one Supreme Court and such District Courts and other subordinate courts as may be established pursuant to law enacted by the General Council.

Section 2. The jurisdiction exercised by the Courts of the Seminole Nation of Oklahoma shall be limited to (a) matters arising on trust or restricted land within the jurisdictional boundaries of the Seminole Nation of Oklahoma, (b) All matters other than Criminal, whether or not arising on trust or restricted land within said jurisdictional boundaries, arising between members of the Nation or involving nonmembers provided that at least one party is Seminole, (c) matters over which the Nation may exercise jurisdiction pursuant to 25 U.S.C. § 1901, et seq., or

other federal law whether or not arising on trust or restricted land within said jurisdictional boundaries; and (d) any other matter where jurisdiction is authorized by any federal law, regulation. The original jurisdiction of the Supreme Court shall extend to a general superintending and administrative control over all inferior courts and all Agencies, Commissions and Boards created by law. The Supreme Court and District Court shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other and further jurisdiction as may be conferred by statute. The appellate and the original jurisdiction of the Supreme Court shall be invoked in the manner provided by law. The decision of the Supreme Court shall be in writing and shall be final. (As amended, July 13, 2013)

Section 3. No Supreme Court Justice, District Court Judge or other judicial official may hold another elective or appointive office within the Seminole Nation of Oklahoma during their tenure as a Justice or Judge.

Section 4. Supreme Court Justices, District Court Judges and judges serving on any subordinate courts shall be nominated by the Principal Chief and shall be subject to confirmation by the General Council. Eligibility requirements for nominees and guidelines for the selection process shall be established by the General Council.

Section 5. Judges and Supreme Court Justices shall receive for their service salaries provided by statute passed by the General Council. The salary of any Judge or Justice may not be reduced during that person's term.

Section 6. The General Council will enact the necessary and appropriate laws to implement and place in operation the provisions of this Article. (As amended, September 20, 2008.)

**SEMINOLE NATION OF OKLAHOMA CONSTITUTION  
CERTIFICATES OF ADOPTION AND APPROVAL**

**CERTIFICATION OF ADOPTION 1969**

Pursuant to the election authorized by the Seminole General Council on September 20, 1968, the foregoing constitution and bylaws was submitted to the registered voters of the tribe and was on March 8, 1969, adopted by a vote of 637 for and 249 against. A total of 1,506 eligible Seminole voters registered for the election and the number of valid ballots cast represented 58.8% of those entitled to vote.

/s/Effie G. Kivett

Effie G. Kivett

Secretary, Seminole Election Comm.

March 12, 1969

/s/ Bennie F. Johnson

Bennie F. Johnson

Chairman, Seminole Election Comm.

/s/ John Brown

John Brown

Chairman, Seminole General Council

**APPROVAL OF 1969 CONSTITUTION**

I, Robert L. Bennett, Commissioner of Indian Affairs, as required in Article XIV of the Constitution of the Seminole Nation of Oklahoma hereby approve said document to be effective on the date of this approval.

April 15, 1969

/s/ Robert L. Bennett

Commissioner

**CERTIFICATION OF ADOPTION 1989**

Pursuant to Resolution No. 88-33 adopted by the General Council of the Seminole Nation of Oklahoma on December 17, 1988, five (5) amendments to the foregoing constitution and bylaws were submitted to the registered voters of the tribe on February 25, 1989. All five amendments were ratified with each amendment receiving a majority of the votes cast.

/s/Robert Kernell, Jr.

Robert Kernell, Jr.

Chairman

Seminole Nation Election Board

February 27, 1989

DATE

/s/ Edwin Tanyan

Edwin Tanyan

Principal Chief

February 27, 1989

DATE

## **APPROVAL FOR 1988 AMENDMENTS**

I, Merritt E. Youngdeer, pursuant to authority delegated to me by the Commissioner of Indian Affairs on December 9, 1988, and as required by Article XIII of the constitution of the Seminole Nation of Oklahoma hereby approve said amendments to be effective on the date of approval.

/s/Merritt E. Youngdeer  
Area Director

March 10, 1989  
DATE

## **CERTIFICATION OF ADOPTION 1991**

Pursuant to Resolution No. 91-19 and 91-19A adopted by the General Council of the Seminole Nation of Oklahoma on July 27, 1991 and August 29, 1991 respectively, four (4) amendments to the foregoing constitution and bylaws were submitted to the registered voters of the tribe on November 9, 1991. Three of the five amendments were ratified with three amendments receiving a majority of the votes cast.

1. Proposed Amendment No. 1 amended the Seminole Constitution by adding new Article XV Territorial Jurisdiction as follows:

### **ARTICLE XV – TERRITORIAL JURISDICTION**

The territorial jurisdiction of the Seminole Nation of Oklahoma shall be within the geographical boundaries established by the Treaty of March 21, 1866, 14 Stat. 755, entered into by the Seminole Nation of Oklahoma and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries, owned in fee by the Seminole Nation of Oklahoma or held in trust by the United States on behalf of the Seminole Nation of Oklahoma. All of said property subject to the territorial jurisdiction of the Seminole Nation of Oklahoma, both real and personal, shall be exempt from federal and state taxation, when not inconsistent with federal law.

Proposed Amendment No. 1 was adopted by a vote of 118 for and 98 against. BIA approved adoption of Amendment No. 1 on July 17, 1992.

2. Proposed Amendment No 2 would have amended the Seminole Constitution by adding a new Article XVI – Courts which would have established a tribal court system for the Seminole Nation. Proposed Amendment No. 2 was rejected by the qualified voters of the Nation by a vote of 107 for and 108 against.

3. Proposed Amendment No. 3 would amend the Seminole Constitution by adding a new subsection (j) to Article V which would permit the Nation to levy and collect taxes within the



territorial jurisdiction of the Nation. Proposed Amendment No. 3 was rejected by the qualified voters of the Nation by a vote of 91 for and 127 against.

4. Proposed Amendment No. 4 would amend the Seminole Constitution by repealing the provision contained in Section 3 of Article III which provided that the election of officers in no way limited the authority of the President of the United States to appoint a Principal Chief of the Seminole Nation pursuant to the Act of April 26, 1906 (34 Stat. 137). The proposed amendment was adopted by a vote of 110 for and 104 against. The Act of October 22, 1970, P.L. 91-495, which provided that the popular selection of the principal chiefs of the Cherokee, Choctaw, Creek and Seminole Tribes of Oklahoma and the Governor of the Chickasaw Tribe of Oklahoma by its members, in effect repealed this provision. Proposed Amendment No. 4 was approved by BIA on July 17, 1992.

5. Proposed Amendment No. 5 would amend Article XII by eliminating the requirement that future amendments to the Constitution of the Seminole Nation be subject to the approval of the Secretary of the Interior (Commission of Indian Affairs). The proposed amendment was adopted by vote of 112 for and 102 against. Proposed Amendment No. 5 was disapproved by BIA on July 17, 1992. Proposed Amendment No. 5 read as follows:

Section 1 of Article XII of the Constitution of the Seminole Nation of Oklahoma shall be amended by deleting the last sentence of said section as follows:

Amendments so ratified shall be submitted to the Commissioner of Indian Affairs and shall have full force and effect from the date of his approval.

#### **APPROVAL FOR 1991 AMENDMENTS**

I, Theodore Quasula, Acting Director, Office of Tribal Services, by virtue of the authority granted to the Secretary of the Interior and delegated to me by 230 D.M. 2.4, and by Article XIV of the Constitution of the Seminole Nation of Oklahoma do hereby approve the forgoing Amendments Nos. 1 and 4 to the Constitution of the Seminole Nation of Oklahoma, PROVIDED, That nothing contained in this approval shall be construed as authorizing any action under this Constitution .

/s/ Theodore Quasula  
Acting Director, Office of Tribal Services

July 17, 1992  
DATE

#### **DISAPPROVAL OF 2000 AMENDMENTS**

In its September 21, 2001 Memorandum Opinion in *The Seminole Nation of Oklahoma v. Norton*, Civil Action No. 00-2384 (CKK), the United States for the District of Columbia remanded, for action by the Bureau of Indian Affairs, six (6) proposed amendments to the 1969 constitution of the Seminole Nation of Oklahoma (as amended March 10, 1989). The Southern Plains Regional (SPR) Director has recommended we disapprove the amendments. We agree.

A majority of the voter in the July 1, 2000, election voted in favor of each of the described amendments:

- Amendment No. 1, adding new Article XVII – Courts, amending the Preamble to reflect the separation of powers, and amending Articles IV and V outlining the respective authorities of the Principal Chief and Chairperson of the General Council;
- Amendment No. 2, Powers of the General Council --Adding to the powers of the General Council to include Taxation Authority;
- Amendment No. 3, Territorial Jurisdiction -- Amending Article XV – Territorial Jurisdiction to establish jurisdiction and extend the boundary line of the Seminole Nation further to the East to include the area purchase from the Creek Nation in 1881;
- Amendment No. 4, Chief and Assistant Chief -- First sentence of Article III, Section 3 be amended to establish term limits for the elected office of the Principal Chief and Assistant Chief;
- Amendment No. 5, Initiative and Referendum Powers -- Creating a new Article of the Constitution to allow for initiative and referendum process by members of the Seminole Nation; and
- Amendment No. 9, an amendment to empower the General Council to revise a congressionally approved judgment distribution plan adopted pursuant to the Act of April 30, 1990, Pub L. 101-277, 104 Stat. 143, which provides for the use and distribution of funds awarded to the Seminole Indian in Dockets 73, 151, and 73-A of the Indian Claims Commission.

Although there is no evidence that the failure to comply with the express notice requirements of the constitution made any difference in the outcome of the election on the amendments, it remains that the Nation did not follow constitutionally established requirements before they held the special election and the courts have held the Department to a strict compliance with the notice provision. Since amendment 9 would require congressional action, the tribe should consult with the Bureau's legislative affairs office if it wishes to pursue that amendment. Therefore the amendments are disapproved.

/s/ Michael R.

Acting Director, BIA, Washington D.C.

March 14, 2008

DATE

### **APPROVAL OF 2008 AMENDMENTS**

Pursuant to Resolution No. 2009-79 adopted by the General Council of the Seminole Nation of Oklahoma on July 10, 2008, two (2) amendments to the foregoing constitution and bylaws were submitted to the registered voters of the tribe on September 20, 2008. Both amendments were ratified, receiving a majority of the votes cast as certified by the Seminole Nation Election Board (Dee Bennett, Kissie L. Mouse and Timothy R. Hooper).

Amendment No. 1 added a new Article XVI – Courts and established the Nation’s judiciary system.

Amendment No. 2 amended Article XIII – Amendment by removing the requirement that future constitutional amendments be submitted to the Commissioner of Indian Affairs.

### **CERTIFICATE OF APPROVAL**

I, Robert K. Impson, (Acting) Regional Director, Eastern Oklahoma Region, Bureau of Indian Affairs, Department of the Interior by virtue of the authority granted by the Act of June 26, 1936, (49 Stat. 1967) and under the authority delegated by 130 DM 3 and 3 IAM 4.4, do hereby approve the Constitution of the Seminole Nation of Oklahoma, as amended. PROVIDED, that nothing contained in this approval shall be construed as authorizing any action under this Constitution that would be contrary to Federal law.

Date: September 2, 2010

/s/Robert K. Impson  
(Acting) Regional Director  
Eastern Oklahoma Region  
Bureau of Indian Affairs  
3100 W. Peak Blvd.  
Muskogee, Oklahoma 74401

### **APPROVAL OF 2013 AMENDMENTS**

Pursuant to Resolution No. 2013-50 adopted by the General Council of the Seminole Nation of Oklahoma on March 2, 2013, one (1) amendment to the foregoing constitution and bylaws were submitted to the registered voters of the tribe on July 13, 2013. The amendment was ratified, receiving a majority of the votes cast as certified by the Seminole Nation Election Board (Glenn Davis, Debbie Johnson, and Mary A. Jackson).

Amendment corrected the names of certain Bands in Article IV, General Council, Section 1.

Pursuant to Resolution No. 2013-51 adopted by the General Council of the Seminole Nation of Oklahoma on March 2, 2013, one (1) amendment to the foregoing constitution and bylaws were submitted to the registered voters of the tribe on July 13, 2013. The amendment was ratified, receiving a majority of the votes cast as certified by the Seminole Nation Election Board (Glenn Davis, Debbie Johnson, and Mary A. Jackson).

Amendment to amend the jurisdiction of the Courts in Seminole Nation in Article XVI, Courts, Section 2.

Pursuant to Resolution No. 2013-52 adopted by the General Council of the Seminole Nation of Oklahoma on March 2, 2013, one (1) amendment to the foregoing constitution and bylaws were submitted to the registered voters of the tribe on July 13, 2013. The amendment was ratified, receiving a majority of the votes cast as certified by the Seminole Nation Election Board (Glenn Davis, Debbie Johnson, and Mary A. Jackson).

Amendment of subsection (j) to Article V, Powers of the General Council.

# **TITLE ONE APPELLATE PROCEDURE CODE**

## **INDEX**

<b>TITLE ONE APPELLATE PROCEDURE CODE INDEX.....</b>	<b>i</b>
<b>TITLE ONE APPELLATE PROCEDURE CODE INTRODUCTION .....</b>	<b>1</b>
Section 1.    Scope and Applicability of Rules .....	1
Section 2.    Suspension and Revision of Rules.....	1
Section 3.    Discretionary Authority .....	1
Section 4.    Definitions .....	2
<b>CHAPTER ONE APPEALS FROM JUDGMENTS AND ORDERS OF THE DISTRICT COURT.....</b>	<b>2</b>
Section 101.  Appeal as of Right - How Taken .....	2
Section 102.  Appeal as of Right - When Taken.....	3
Section 103.  Interlocutory Appeals in Civil Actions .....	5
Section 104.  Interlocutory Appeals in Criminal Actions .....	9
Section 105.  Appeals by the Nation in Criminal Actions .....	9
Section 106.  Bond for Costs on Appeal in Civil Cases.....	9
Section 107.  Stay or Injunction Pending Appeal.....	10
Section 108.  Release in Criminal Cases .....	11
Section 109.  The Record on Appeal .....	11
Section 110.  Transmission of Record .....	13
Section 111.  Reserved.....	14
Section 112.  Docketing the Appeal; Filing the Record.....	14
<b>CHAPTER TWO EXTRAORDINARY WRITS .....</b>	<b>15</b>
Section 201.  Mandamus or Prohibition Directed to a Judge .....	15
Section 202.  Denial or Order Directing Answer.....	15
Section 203.  Other Extraordinary Writs.....	15
Section 204.  Form of Papers; Number of Copies .....	16
<b>CHAPTER THREE HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS ....</b>	<b>17</b>
Section 301.  Habeas Corpus Proceedings .....	17
Section 302.  Transfer of Custody Pending Review .....	17
Section 303.  Detention or Release Pending Review of Decision Failing To Release .....	17
Section 304.  Detention or Release Pending Review of Decision Ordering Release.....	17
Section 305.  Modification of Initial Order Respecting Custody .....	18

Section 306.	Reserved.....	18
Section 307.	Reserved.....	18
Section 308.	Reserved.....	18
Section 309.	Reserved.....	18
Section 310.	Reserved.....	18
Section 311.	Leave from District Court to Proceed to Supreme Court.....	18
Section 312.	Special Rule for Parties Previously Granted Permission to Proceed in Forma Pauperis .....	19
Section 313.	Remedy for Denial of Motion by District Court .....	19
<b>CHAPTER FOUR GENERAL PROVISIONS .....</b>		<b>20</b>
Section 401.	Filing Papers; Filing by Mail.....	20
Section 402.	Service of All Papers Required.....	20
Section 403.	Manner of Service.....	20
Section 404.	Proof of Service .....	20
Section 405.	Computation of Time .....	21
Section 406.	Enlargement of Time .....	21
Section 407.	Additional Time after Service by Mail .....	21
Section 408.	Reserved.....	21
Section 409.	Reserved.....	21
Section 410.	Reserved.....	22
<b>SUBCHAPTER A MOTIONS AND BRIEFS .....</b>		<b>22</b>
Section 411.	Content, Response, and Reply to Motions .....	22
Section 412.	Determination of Motions for Procedural Orders.....	22
Section 413.	Power of a Single Justice to Entertain Motions.....	22
Section 414.	Form of Papers; Number of Copies .....	23
Section 415.	Brief of Appellant .....	23
Section 416.	Brief of Appellee .....	23
Section 417.	Reply Brief .....	24
Section 418.	References in Briefs to Parties.....	24
Section 419.	References in Briefs to the Record and Statutes.....	24
Section 420.	Length of Briefs.....	24
Section 421.	Briefs in Cases Involving Cross Appeals .....	25
Section 422.	Briefs in Cases Involving Multiple Appellants or Appellees .....	25
Section 423.	Citation of Supplemental Authorities .....	25
Section 424.	Brief of an Amicus Curiae.....	25

Section 425.	Appendix to the Briefs .....	26
Section 426.	Time for Filing and Service of Briefs .....	26
Section 427.	Number of Copies to Be Filed and Served.....	26
Section 428.	Consequence of Failure to File Briefs.....	26
Section 429.	Form of Briefs, the Appendix and Other Papers .....	27
Section 430.	Form of Other Papers .....	27
Section 431.	Reserved.....	28
Section 432.	Reserved.....	28
Section 433.	Reserved.....	28
Section 434.	Reserved.....	28
Section 435.	Reserved.....	28
Section 436.	Reserved.....	28
Section 437.	Reserved.....	28
Section 438.	Reserved.....	28
Section 439.	Reserved.....	29
Section 440.	Reserved.....	29
<b>SUBCHAPTER B ARGUMENT.....</b>		<b>29</b>
Section 441.	Prehearing Conference .....	29
Section 442.	Oral Argument in General.....	29
Section 443.	Notice of Argument; Postponement.....	30
Section 444.	Order and Content of Argument .....	30
Section 445.	Cross and Separate Appeals .....	30
Section 446.	Non-Appearance of Parties .....	30
Section 447.	Submission on the Briefs .....	30
Section 448.	Use of Physical Exhibits at Argument; Removal .....	31
Section 449.	When Hearing or Rehearing en Banc Will Be Ordered .....	31
Section 450.	Suggestion of a Party for Hearing or Rehearing en Banc .....	31
Section 451.	Time for Suggestion of a Party for Hearing or Rehearing en Banc; Suggestion Does Not Stay Mandate .....	31
Section 452.	Reserved.....	32
Section 453.	Reserved.....	32
Section 454.	Reserved.....	32
Section 455.	Reserved.....	32
Section 456.	Reserved.....	32
Section 457.	Reserved.....	32

Section 458. Reserved.....	32
Section 459. Reserved.....	32
Section 460. Reserved.....	32
<b>SUBCHAPTER C JUDGMENT.....</b>	<b>33</b>
Section 461. Entry of Judgment.....	33
Section 462. Interest on Judgments.....	33
Section 463. Damages for Delay .....	33
Section 464. To Whom Costs Allowed.....	33
Section 465. Costs for or Against the Nation .....	34
Section 466. Costs of Briefs, Appendices, and Copies of Records .....	34
Section 467. Bill of Costs; Objections; Costs Inserted in Mandate or Added Later.....	34
Section 468. Cost on Appeal Taxable in the District Court .....	34
Section 469. Petition for Re-hearing.....	35
Section 470. Issuance of Mandate .....	35
Section 471. Voluntary Dismissal.....	35
Section 472. Substitution of Parties .....	36
Section 473. Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Nation is not a Party .....	36
<b>ATTORNEY RULES ATTORNEYS AND LAY ADVOCATES RULES .....</b>	<b>37</b>
Rule 101. Admission to the Bar .....	37
Rule 102. Discipline .....	38
Rule 103. Appearance and Withdrawal of Counsel.....	40
Rule 104. Courtroom Decorum .....	41
Rule 105. Attorney Conference with Respect to Discovery Motions.....	43
Rule 106. Free Press - Fair Trial.....	44
Rule 107. Plan of the District Court for the Representation of Indigent Defendant.....	47
<b>OATH OF ATTORNEY .....</b>	<b>49</b>



# **TITLE ONE**

## **APPELLATE PROCEDURE CODE**

### **INTRODUCTION**

#### **Section 1. Scope and Applicability of Rules**

(a) Scope. This Title governs the procedure in appeals to the Supreme Court from the District Court, and in application for writs or other relief that the Supreme Court or a Justice thereof is competent to give. When this Title provides for the making of a motion or application in the District Court, the procedure for making such motion or application shall be in accordance with the practice of that Court.

(b) Jurisdiction not Affected. This Title shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other applicable law, and all provisions of this Title shall be subject to the Constitution of the Nation.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 2. Suspension and Revision of Rules**

(a) In the interest of expediting decisions, the furtherance of the administration of justice, or for other good cause shown, the Supreme Court may, except as provided in section 406, suspend the requirements or provisions of any of section of this Title in a particular case on application of a party or on its own motion, and may order proceedings in accordance with its direction.

(b) The Supreme Court shall have the power to prescribe amendments to this Title except with respect to rules relating to privileges. Such amendments shall not take effect until ninety (90) days after such amendments have been submitted in writing to the General Council by the Chief Justice. If, before the expiration of such ninety (90) day period, five (5) or more members of the General Council object in writing to the proposed amendments, such amendments shall not become effective unless thereafter approved by the General Council at a regular meeting. The effective date of any amendment so reported may also be deferred by the General Council to a later date. Any rule whether proposed or in force may be amended by the General Council. Any proposed amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by the General Council. Upon becoming effective, all amendments made by the Supreme Court shall be incorporated into this Title and thereafter have the force and effect of law.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 3. Discretionary Authority**

Where no procedure is provided in this Title, other applicable law or Court Rule, the Supreme Court may proceed to exercise its functions in any lawful manner.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 4. Definitions**

Except as otherwise provided, this Title incorporates all terms defined in Section 2 of Title 5.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**CHAPTER ONE  
APPEALS FROM JUDGMENTS  
AND ORDERS OF THE DISTRICT COURT**

**Section 101. Appeal as of Right - How Taken**

(a) Filing the Notice of Appeal. An appeal permitted by the laws of the Nation as of right from the District Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk of the District Court within the time allowed by section 102, or by the statute applicable in the specific case. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of the District Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal.

(1) The notice of appeal shall:

- (A) specify the parties to the appeal;
- (B) designate the order, commitment, or judgment from which the appeal is taken;
- (C) note the division of the District Court (civil, criminal, juvenile, or small claims) from which the appeal is taken; and
- (D) contain a short statement of the reason or grounds for the appeal.

(2) An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of the Notice of Appeal. The Clerk of the District Court shall serve notice of the filing of an appeal by mailing a copy of the notice of appeal, which copy shall be provided by the appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall forthwith certify and deliver to the Clerk of the Supreme Court, for filing in the Supreme Court, a certified copy of the notice of appeal. The Clerk of the Supreme Court shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk of the District Court shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk of District Court shall note on each copy served the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The Clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the District Court, the appellant shall pay to the Clerk of the District Court, for deposit in the Court Fund, a filing fee which shall be in such amount as may be determined by rule of the Supreme Court, except that payment of a filing fee shall not be required for an appeal by the Nation, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Nation, its officers or agents, the private party shall pay the required filing fee. The Supreme Court, or a Justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he is without sufficient funds or resources with which to pay the required fees.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 102. Appeal as of Right - When Taken**

### **(a) Appeals in Civil Cases**

(1) In a civil case in which an appeal is permitted by law as of right from the District Court to the Supreme Court, the notice of appeal required by section 101 shall be filed with the Clerk of the District Court within the following time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided by statute:

- (A) From an order or judgment in an action for forcible entry or forcible or unlawful detainer: ten (10) days.
- (B) From an order, decree, or judgment of the Juvenile Division of the District Court, (except an order, decree, or judgment which terminates parental rights): thirty (30) days.
- (C) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights: ninety (90) days.

- (2) Except as provided in subsection (a)(4) of this section, a notice of appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.
  - (3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this section, whichever period last expires.
  - (4) If a timely motion is filed in the District Court by any party:
    - (A) for judgment notwithstanding the verdict, or
    - (B) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or
    - (C) to alter or amend the judgment or for a new trial, then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.
  - (5) The District Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than thirty (30) days after the expiration of the time prescribed by this section. Any such motion which is filed before expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with Title 3. No such extension shall exceed thirty (30) days past such prescribed time or ten (10) days from the date of entry of the order granting the motion, whichever occurs later.
  - (6) A judgment or order is entered within the meaning of this section when it is entered compliance with the Civil Procedure Code.
- (b) Appeals in Criminal Cases.
- (1) In a criminal case, the notice of appeal by a defendant shall be filed in the District Court within ten (10) days after the entry of the final judgment and sentence or other order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal

entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

- (2) If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within ten (10) days after the entry of an order denying the motion.
- (3) A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within ten (10) days after entry of the judgment.
- (4) When an appeal by the Nation is authorized by statute, the notice of appeal shall be filed by the Nation in the District Court within ten (10) days after the entry of the judgment or order appealed from unless a different time is specifically set by the statute authorizing the appeal. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to Title 7, section 401.
- (5) Upon a showing of excusable neglect, the District Court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this subdivision of this section.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Interlocutory Appeals in Civil Actions**

- (a) Interlocutory Appeals as of Right.
  - (1) A person may appeal to the Supreme Court by right any order made appealable by law, and the following judgments or orders of the District Court:
    - (A) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.
    - (B) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.
    - (C) An order that denies, grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.

- (D) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.
- (E) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property.
- (F) An order that directs the payment of money pendente lite, except where granted ex parte where a full hearing will be held upon application therefore, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite.
- (G) An order that certifies or refuses to certify an action to be maintained as a class action.
- (H) An order with regard to probate matters:
  - (i) granting, refusing, or revoking letters testamentary or of administration, or of guardianship, or conservatorship; or
  - (ii) admitting, or refusing to admit a will to probate; or
  - (iii) against or in favor of the validity of a will or revoking the probate thereof; or
  - (iv) against or in favor of setting apart property, or making an allowance for a widow or child; or
  - (v) against or in favor of directing the partition, sale or conveyance of any interest in real property; or
  - (vi) settling an account of an executor, or administrator or guardian; or
  - (vii) refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share; or
  - (viii) refusing or allowing the release of any tax liability; or

(ix) from any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.

(I) Any interlocutory order or decree made immediately appealable by applicable law.

(2) Time for Filing Interlocutory Appeals as of Right and Special Rules.

(A) The party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination of the action by filing the notice of appeal with the District Court Clerk within twenty (20) days after the order is issued.

(B) If the order discharges or modifies an attachment or preliminary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or preliminary injunction shall stay the enforcement of said order and said order shall remain in full force and effect until final order of discharge after appeal shall take effect.

(C) If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in such sum as the Court deems proper, to secure the party procuring the injunction the damages he may sustain, including reasonable attorneys' fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.

(D) Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the Court or a Judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Nation or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(b) Interlocutory Appeals by Permission. When a judge, in making an order or decree in a civil action not otherwise appealable under this section or other applicable law, is of the opinion that such order involves a controlling question for law as to which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Supreme Court may thereupon, in its discretion, permit an appeal to be taken from such order, if

application is made within ten (10) days after the entry of the order, provided, however, that application for an appeal hereunder shall not stay proceedings in the District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court so orders.

(c) Petition for Permission to Appeal. An appeal from an interlocutory order containing the statement prescribed by section 103(b) may be sought by filing a petition for permission to appeal with the Clerk of the Supreme Court within ten (10) days after the entry of such order in the District Court with proof of service on all other parties to the action in the District Court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within ten (10) days after entry of the order as amended.

- (1) The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the District Court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which the appeal is sought and any findings of fact, conclusions of law and opinion relating thereto. Within seven (7) days after service of the petition, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.
- (2) All papers may be typewritten. Ten (10) copies shall be filed with the original, but the Court may require that additional copies be furnished.
- (3) Within ten (10) days after the entry of an order granting permission to appeal, the appellant shall:
  - (A) pay to the Clerk of the District Court the fees established by rule of the Supreme Court for the filing of appeals by permission; and
  - (B) file a bond for costs if required by the Supreme Court.
- (4) The Clerk of the District Court shall notify the Clerk of the Supreme Court of the payment of the fees. Upon receipt of such notice the Clerk of the Supreme Court shall enter the appeal upon the docket. The record shall be transmitted and filed as in cases of direct appeal by right. A notice of appeal need not be filed.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



#### **Section 104. Interlocutory Appeals in Criminal Actions**

(a) Appeal by the Defendant. An interlocutory appeal to the Supreme Court may not be taken by the defendant except by leave of the Court in the same manner as the taking of interlocutory appeals by permission in civil actions.

(b) Appeal by the Nation. An appeal by the Nation to the Supreme Court may be taken from a decision or order of the District Court prior to the beginning of trial suppressing or excluding evidence, or requiring the return of seized property in a criminal proceeding, or dismissing the criminal complaint, and, after the verdict is returned, upon an order granting a new trial, or an order refusing to revoke probation or parole, or an order reducing a valid sentence previously imposed.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 105. Appeals by the Nation in Criminal Actions**

(a) An appeal to the Supreme Court may be taken by the Nation from the final judgment in a criminal action in the following cases:

- (1) Upon judgment for the defendant quashing or setting aside the criminal complaint prior to trial. If the Nation's appeal is upheld under this subsection, the complaint shall be reinstated, and the case shall proceed to trial.
- (2) Upon an order of the Court arresting the judgment. If the Nation's appeal is upheld under this subsection, the judgment and sentence shall be entered and enforced.
- (3) Upon a question of law reserved by the Nation. A defendant may not be tried again for the same offense if the Nation's appeal is upheld under this section.

(b) Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with section 108 of this Title.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 106. Bond for Costs on Appeal in Civil Cases**

The District Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of section 107(b) of this Title apply to a surety upon a bond given pursuant to this Section.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 107. Stay or Injunction Pending Appeal**

(a) Procedure. Application for a stay of the judgment or order of District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the District Court. A motion for such relief may be made to the Supreme Court, or to a Justice thereof, but the motion shall show that application to the District Court for the relief sought is not practicable, or that the District Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the District Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. Such parts of the record as are relevant to the motion shall be filed with the motion. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Supreme Court, and normally will be considered by the entire Court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the Court pending review by the entire Court. In cases where relief has not been previously requested in the District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the District Court for its initial determination.

(b) Bond; Proceedings against Sureties. Relief available in the Supreme Court under this section may be conditioned upon the filing of a bond or other appropriate security in the District Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the District Court and irrevocably appoints the Clerk of the District Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk of the District Court with his proper and current address, and a supply of stamped, self-addressed envelopes, if he wishes copies of any papers served upon the Clerk as his agent to be mailed to him. His liability may be enforced on motion in the District Court without the necessity of an independent action. The motion and such notice of the motion as the District Court shall prescribe may be served on the Clerk of the District Court who shall forthwith mail copies to the sureties if their addresses are known.

(c) Criminal Cases. Stays in criminal cases shall be had in accordance with the provisions of Title 7, section 502.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 108. Release in Criminal Cases**

(a) Appeal of Order Denying Release Pending Appeal. An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. Upon entry of an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence, the District Court shall state in writing the reasons for the action taken. The appeal in such matters shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Supreme Court, or a justice thereof pending action by the entire Court, may order the release of the appellant pending the appeal.

(b) Procedure. Application for release after a judgment of conviction shall be made in the first instance in the District Court. If the District Court refuses release pending appeal, or imposes conditions of release, the Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court, or a justice thereof pending action by the entire Court, may order the release of the appellant pending disposition of the motion.

(c) Criteria for Release. The decision as to release pending appeal shall be made in accordance with the criteria for bail established by law in Title 7, et. seq. or otherwise. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 109. The Record on Appeal**

(a) Composition of the Record on Appeal. The original papers and exhibits filed in the District Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the Clerk of the District Court shall constitute the record on appeal in all cases.

(b) Transcript; Duty of Appellant to Order; Notice of Partial Transcript

- (1) Within ten (10) days after filing the notice of appeal, the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing, and within the same period a copy shall be filed with the Clerk of the District Court. If no such parts of the proceedings are to be ordered within the same period, the appellant shall file a certificate to that effect.
- (2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall

include in the record a transcript of all evidence relevant to such finding or conclusion.

- (3) Unless the entire transcript is to be included, the appellant shall, within the ten (10) day time limit provided in subsection (b)(1), file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten (10) days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within ten (10) days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following ten (10) days order the parts or move in the District Court for an order requiring the appellant to do so.
- (4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the costs of the transcript. If a typewritten transcript is ordered, the Clerk or reporter shall charge a fee to be set by the Court for each original page, and an additional fee for each copy of an original page. If a copy of a tape recording of the proceedings is ordered, the Clerk or reporter shall charge a fee to be set by the Court for each tape copy ordered. All such fees paid on behalf of a Clerk or reporter who is employed by the Nation and paid a salary by the Nation shall be deposited in the Court fund, unless specific statutory authority for other disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the District Court to record its proceedings, but not paid from tribal funds, shall be paid over to such reporter.

(c) Procedure When No Transcript Available. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statements shall be served on the appellee, who may serve objections or propose amendments thereto within ten (10) days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the District Court for settlement and approval and as settled and approved shall be included by the Clerk of the District Court in the record on appeal.

(d) Agreed Statement as to the Record on Appeal. In lieu of the record on appeal as defined in subsection (a) of this section, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the District Court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the District Court, and shall then be certified to the Supreme Court as the record on appeal and transmitted to the Supreme Court Clerk's records.

(e) Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the District Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 110. Transmission of Record**

(a) Chief Clerk to Serve as Clerk of the Supreme Court. The Chief Clerk of the District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant, or, in the opinion of the Supreme Court such service shall be deemed expedient.

(b) Transmission and Filing of Record. In all cases, including juvenile and criminal actions, the Clerk in charge of the papers in that case shall, within fifteen (15) working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page to be set by rule of the Supreme Court.

(c) Completion of Record. Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, so endorsed, to the Clerk of the Supreme Court. If the transcript cannot be completed within thirty (30) days of receipt of the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the failure to file the transcript or complete making copies of the tapes within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the Clerk or reporter shall file it with the Clerk of the District Court and shall notify the Clerk of the Supreme Court that he has done so.

(d) Transmission of Transcript. Upon receipt of the transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in section 109(c) or (d) of this Title, the Clerk of the District Court shall forthwith notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Supreme Court, shall state in the notice the date upon which the notice was given, and the

date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen (15) days after the mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the District Court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed for the purposes of the appeal.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 111. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 112. Docketing the Appeal: Filing the Record**

(a) Docketing the Appeal. Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the District Court pursuant to section 110(b), the Clerk of the Supreme Court shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the District Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

(b) Upon receipt of the completed record on appeal as provided in section 110(d), the Clerk of the Supreme Court shall file it and shall immediately give notice to all parties of the date on which it was filed.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER TWO EXTRAORDINARY WRITS**

### **Section 201. Mandamus or Prohibition Directed to a Judge**

Application for a writ of mandamus or of prohibition directed to a District Judge, or to any other subordinate agency or officer against whom an original action in mandamus or prohibition may be filed by law in the Supreme Court, shall be made by filing a petition therefore with the Clerk of the Supreme Court with proof of service on the respondent and on all parties in interest to the action in the District Court. The petition shall contain, a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The Clerk shall docket the petition and submit it to the Court upon payment of a docketing fee set by Court rule. In vacation, the alternative writ may be issued by a single Justice but a peremptory writ should be issued only by a quorum of the Court. The Supreme Court may, in its discretion, remand the writ to the District Court for initial determination.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 202. Denial or Order Directing Answer**

If the Court is of the opinion that the writ should not be granted in any case on the facts and law stated in the petition, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the Clerk on the named respondents and on all other parties to the action in the District Court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the named respondents do not desire to appear in the proceeding, they may so advise the Clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceeding shall be given preference over ordinary civil cases. These writs may be used to compel a respondent to perform a required action or to refrain from exceeding his jurisdiction, but may not be used to control the discretionary actions of judges, agencies, or other officials of the Nation.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 203. Other Extraordinary Writs**

Application for extraordinary writs other than those provided for in section 201 of this chapter shall be made by petition filed with the Clerk of the Supreme Court with proof of service on the parties named as respondents. Proceedings on such applications shall conform, so far as is practicable, to the procedure prescribed in sections 201 and 202 of this chapter.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 204. Form of Papers: Number of Copies**

All papers may be typewritten. Ten (10) copies and the original shall be filed, but the Court may direct that additional copies be furnished.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]



## **CHAPTER THREE**

### **HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS**

#### **Section 301. Habeas Corpus Proceedings**

An application for a writ of habeas corpus shall originally be made to the District Court. If application is made to the Supreme Court, or a Justice thereof individually, the application will ordinarily be transferred to the Supreme Court for determination. The Supreme Court, or a Justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the District Court and denied, renewal of the application before the Supreme Court, or a Justice thereof, is not favored; the proper remedy is by appeal to the Supreme Court from the order of the District Court denying the writ.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 302. Transfer of Custody Pending Review**

Pending review of a decision in a habeas corpus proceeding commenced before the Court, or a Justice or Judge for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this section and Court rules. Upon application of a custodian showing a need therefore, the Court, Justice or Judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 303. Detention or Release Pending Review of Decision Failing To Release**

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge rendering the decision, or to the Supreme Court en banc.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 304. Detention or Release Pending Review of Decision Ordering Release**

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon his recognizance, with or without surety, unless the Court or Justice or Judge rendering the decision, or the Supreme Court shall otherwise order.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 305. Modification of Initial Order Respecting Custody**

An initial order respecting the custody or release of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, release or surety shall be made.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 306. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 307. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 308. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 309. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 310. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 311. Leave from District Court to Proceed to Supreme Court**

A party to an action in the District Court who desires to proceed on appeal in forma pauperis shall file in the District Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his inability to pay fees and costs or to give security therefor, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court, and without prepayment of fees or costs in either Court or the giving of security therefor. If the motion is denied, the District Court shall state in writing the reasons for the denial.

**Section 312. Special Rule for Parties Previously Granted Permission to Proceed in Forma Pauperis**

Notwithstanding the provisions of the preceding section, a party who has been permitted to proceed

in an action in the District Court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the District Court shall state in writing the reasons for such certification or finding.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; Approved by BIA February 2, 2012.]

**Section 313. Remedy for Denial of Motion by District Court**

If a motion for leave to proceed on appeal in forma pauperis is denied by the District Court, or if the District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the Clerk shall forthwith serve notice of such action. A motion for leave so to proceed may then be filed in the Supreme Court, within thirty (30) days after service of notice of the action of the District Court. The motion shall be accompanied by a copy of the affidavit filed in the District Court, or by the affidavit prescribed by section 311 of this Title if no affidavit has been filed in the District Court, and by a copy of the statement of reasons given by the District Court for its action.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER FOUR GENERAL PROVISIONS**

### **Section 401. Filing Papers: Filing by Mail**

Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if First Class U.S. Mail or any more expeditious form of delivery by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the Justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the Clerk.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 402. Service of All Papers Required**

Copies of all papers filed by any party and not required by this Title to be served by the Clerk shall, at or before the time of filing, be served by that party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 403. Manner of Service**

Service may be affected by personal delivery or by mail in any manner allowed by Title 3, Chapter 2 for service of motions or briefs. Personal service includes delivery, of the copy to a clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 404. Proof of Service**

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 405. Computation of Time**

In computing any period of time prescribed or allowed by this Title, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to eleven (11) days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the clerk of the court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this section and in the provisions relating to the Court, “legal holiday” includes New Year’s Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the General Council.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 406. Enlargement of Time**

The Court for good cause shown may upon motion enlarge the time prescribed by this Title or Court rule or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 407. Additional Time after Service by Mail**

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and that paper is served by mail, three (3) days shall be added to the prescribed period.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 408. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 409. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 410. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**SUBCHAPTER A  
MOTIONS AND BRIEFS**

**Section 411. Content, Response, and Reply to Motions**

Unless another form is elsewhere prescribed by this Title, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of this Title governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven (7) days after service of the motion, but motions authorized by sections 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 412. Determination of Motions for Procedural Orders**

Notwithstanding the provisions of section 411 of this Title as to motions generally, motions for procedural orders, including any motion under section 406, may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action may by application to the Court request consideration, vacation or modification of such action.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 413. Power of a Single Justice to Entertain Motions**

In addition to the authority expressly conferred by this Title or by other applicable law, a single Justice of the Supreme Court may entertain and may grant or deny any request for relief which under this Title may properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding. The Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by the Court. The action of a single Justice may be reviewed by the Court as a whole.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 414. Form of Papers: Number of Copies**

All papers relating to motions may be typewritten. Ten (10) copies shall be filed with the original, but the Court may require that additional copies be furnished.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 415. Brief of Appellant**

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

- (a) A cover page as described in section 429.
- (b) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (c) A statement of the issues presented for review.
- (d) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.
- (e) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.
- (f) A short conclusion stating the precise relief sought.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 416. Brief of Appellee**

The brief of the appellee shall conform to the requirements of section 415, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 417. Reply Brief**

The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 418. References in Briefs to Parties**

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower Court or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the care," or the names of the parties.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 419. References in Briefs to the Record and Statutes**

(a) References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant shall be to the pages of the appendix at which those parts appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript at which the evidence was identified, offered, and received or rejected.

(b) If determination of the issues presented requires the study of statutes, rules, regulations, or similar material or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Court in pamphlet form.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 420. Length of Briefs**

Except by permission of the Court, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five (25) pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, and similar material.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]



#### **Section 421. Briefs in Cases Involving Cross Appeals**

If a cross appeal is filed, the plaintiff in the District Court proceedings shall be deemed the appellant for the purposes of this chapter and sections 426, 427, and 428, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 422. Briefs in Cases Involving Multiple Appellants or Appellees**

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 423. Citation of Supplemental Authorities**

When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk of the Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 424. Brief of an Amicus Curiae**

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Nation, the United States or an officer or agency thereof, or by another Indian Tribe or a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown grants leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Nation to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion. A motion of the Nation to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 425. Appendix to the Briefs**

Whenever the record on appeal, or the transcript is particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his brief when such is necessary for a clear presentation of the issues raised on appeal.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 426. Time for Filing and Service of Briefs**

The appellant shall serve and file his brief within twenty (20) days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within twenty (20) days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen (14) days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least three (3) days before argument.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 427. Number of Copies to Be Filed and Served**

Ten (10) copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order directs a lesser or greater number, and two (2) copies shall be served on counsel for each party separately represented.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 428. Consequence of Failure to File Briefs**

If an appellant fails to file his brief within the time provided by this Title, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 429. Form of Briefs, the Appendix and Other Papers**

(a) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. All printed matter must appear in at least 11-point Roman type on opaque, unglazed paper. Briefs and appendices shall be bound in volumes having pages not exceeding 8 ½ by 11 inches. The text fields in briefs shall not exceed 6 ½ by 9 ½ inches, with double spacing between each line of text, except that quoted matter may be single spaced. The text of footnotes shall be the same size and typeface as the body text. Appendices shall contain tabbed dividers between exhibits. If appended materials are less than 100 pages, they may be bound in a single document with the brief; otherwise, a separate appendix must be filed. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this section may be inserted in the appendix; such pages may be informally re-numbered if necessary.

(b) If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices shall contain:

- (1) the name of the Court and the number of the case;
- (2) the title of the case;
- (3) the nature of the proceedings in the Court (e.g., Appeal; Petition for Review) and the name of the Court below;
- (4) the title of the document (e.g., Brief for Appellant, Appendix); and
- (5) the names, addresses, and telephone number of counsel representing the party on whose behalf the document is filed.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 430. Form of Other Papers**

(a) Petitions for rehearing shall be produced in a manner prescribed by section 429.

(b) Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 ½ by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin.

(c) A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 431. Reserved**

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 432. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 433. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 434. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 435. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 436. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 437. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 438. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 439. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 440. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**SUBCHAPTER B  
ARGUMENT**

**Section 441. Prehearing Conference**

The Court may direct the attorneys for the parties to appear before the Court or a Justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court. The Court or Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 442. Oral Argument in General**

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines:

- (a) the appeal is frivolous; or
- (b) the dispositive issue or set of issues has been recently authoritatively decided; or
- (c) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 443. Notice of Argument; Postponement**

The Clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 444. Order and Content of Argument**

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 445. Cross and Separate Appeals**

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the District Court proceedings shall be deemed the appellant for the purpose of this subchapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 446. Non-Appearance of Parties**

If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 447. Submission on the Briefs**

By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 448. Use of Physical Exhibits at Argument; Removal**

If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 449. When Hearing or Rehearing en Banc Will Be Ordered**

A majority of the Justices of the Court who are in regular active service may order that any motion or other proceeding be heard or reheard by the Supreme Court en banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

- (a) when consideration by the full Court is necessary to secure or maintain uniformity of its decision, or
- (b) when the proceedings involve a question of exceptional importance.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 450. Suggestion of a Party for Hearing or Rehearing en Banc**

A party may suggest the appropriateness of a hearing or rehearing en banc. No response shall be filed unless the Court shall so order. The clerk shall transmit any such suggestion to the Justices of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard en banc unless a Justice in regular active service or the Justice who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 451. Time for Suggestion of a Party for Hearing or Rehearing en Banc; Suggestion Does Not Stay Mandate**

If a party desires to suggest that a motion or proceeding be heard initially en banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for rehearing a motion en banc must be made within ten (10) days after notice of the decision of the Justice initially hearing the motion. The pendency of such a suggestion whether or not included in a petition for hearing shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 452. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 453. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 454. Reserved**

[HISTORY: Reserved by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 455. Reserved**

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 456. Reserved**

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 457. Reserved**

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 458. Reserved**

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 459. Reserved**

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 460. Reserved**

[HISTORY: Ordinance No. 2010-01, June 5, 2010; Approved by BIA February 2, 2012.]



## **SUBCHAPTER C**

### **JUDGMENT**

#### **Section 461. Entry of Judgment**

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 462. Interest on Judgments**

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the District Court the mandate shall contain instruction with respect to allowance of interest.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 463. Damages for Delay**

If the Supreme Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 464. To Whom Costs Allowed**

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 465. Costs for or Against the Nation**

In cases involving the Nation or an agency or officer thereof, if an award of costs against or for the Nation is authorized by applicable Law, costs shall be awarded in accordance with the provisions of section 464 of this Title. Otherwise, costs shall not be awarded against the Nation or its agencies or officers in their official capacity, provided that costs shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 466. Costs of Briefs, Appendices, and Copies of Records**

Unless otherwise provided by applicable law or Court rule, the costs of printing, or otherwise producing necessary copies of briefs, appendices, and copies or records shall be taxable in the Supreme Court at rates not higher than those generally charged for such work within the Nation.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 467. Bill of Costs; Objections; Costs Inserted in Mandate or Added Later**

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the Clerk, with proof of service, within fourteen (14) days after the entry of judgment. Objections to the bill of costs must be filed within ten (10) days of service on the party against whom costs are to be taxed unless the time is extended by the Court. The Clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk of the District Court.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 468. Cost on Appeal Taxable in the District Court**

Costs incurred in preparation and transmission of the record, the costs of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the District Court as costs of the appeal in favor of the party entitled to costs under this Title.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 469. Petition for Re-hearing**

(a) Time for Filing, Content, Answer, Action by Court. A petition for re-hearing may be filed within fourteen (14) days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the Court may make a final disposition of the cause without re-argument or may restore it to the calendar for re-argument or re-submission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition shall be in a form prescribed by section 429, and copies shall be served and filed as prescribed by section 427 for the service and filing of briefs. Except by permission of the Court, a petition for rehearing shall not exceed fifteen (15) pages.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 470. Issuance of Mandate**

The mandate of the Court shall issue twenty-one (21) days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue seven (7) days after entry of the order denying the petition unless the time is shortened or enlarged by order.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 471. Voluntary Dismissal**

(a) Dismissal in the District Court. If an appeal has not been docketed, the appeal may be dismissed by the District Court upon the filing in that Court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) Dismissal in the Supreme Court. If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 472. Substitution of Parties**

(a) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the Clerk of the Court. The motion of a party shall be served upon the representative in accordance with the provisions of sections 402, 403, and 404. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the District Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Title. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this section.

(b) Substitution for Other Causes. If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (a).

(c) Public Officers; Death or Separation from Office.

- (1) When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.
- (2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the Court may require that his name be added.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**Section 473. Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Nation is not a Party**

It shall be the duty of a party who draws in question the constitutionality or unlawfulness under the Indian Civil Rights Act of 1968 of any law of the Nation or action of the General Council in any proceeding in the Supreme Court to which the Nation, or any agency, officer, or employee thereof in their official capacity is not a party, upon the filing of the record, or as soon thereafter

as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of said question. The Clerk shall thereupon certify such fact to the Attorney General who may intervene upon such question upon motion.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **ATTORNEY RULES ATTORNEYS AND LAY ADVOCATES RULES**

### **Rule 101. Admission to the Bar**

(a) Roll of Attorney and Lay Advocates. The Bar of this Court shall consist of those attorneys and lay advocates heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force at the time they were admitted or the oath prescribed by this rule, and have signed the roll of attorneys of this Court.

(b) Procedure for Admission. There is hereby constituted a Committee on Admissions and Grievances, consisting of three (3) members of the Bar of this Court, to be appointed by the Court. Every applicant for admission shall file with the Clerk, on a form prescribed by the Court, a written petition for admission, which shall be referred immediately to the Committee on Admissions and Grievances for investigation into the qualifications of the applicant and his fitness to be admitted to the Bar of this Court. The Committee shall report its recommendations in writing to the Clerk of this Court. Upon a favorable report of the Committee, filed with the Clerk, the applicant, if an attorney, may be admitted. Lay Advocates shall be admitted upon examination as described below. An applicant for admission, who has qualified for admission, may, upon request, be admitted upon order of the Court after having filed his oath of attorney without appearing in Court. Any applicant for admission, who has qualified for admission, may appear at any session of Court during its term and be admitted by taking the oath of attorney in open Court upon motion of any member of the Bar of this Court.

(c) It is desired that the procedure for admission by the Committee include a Tribal Practice Program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Nation's laws and District Court Rules. It is anticipated that this program would be held in the ceremonial courtroom, and would, if possible, include presentations by Court officials and judicial officers. The Court will endeavor to set aside a portion of one (1) day at the beginning of each term for the purpose of conducting the Tribal Practice Program. Any attorney or lay advocate expecting to be admitted during that term should attend unless such attendance would create a hardship for the prospective admittee.

(d) Individual Justices may, from time to time, in emergency situations upon special request, admit individual lawyers who have been approved by the Committee. Before being admitted as a member of the Bar of this Court each applicant shall take and subscribe to the oath shown in Exhibit I to these rules.

(e) Eligibility. Any member in good standing of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or any person appointed as Supreme Court Justice or District Court Judge, or a member in good standing of the Bar of the highest court of any Indian Tribe or State of the United States, is eligible for admission to the Bar of this Court.

(f) Any member of a federally recognized Indian Nation shall be eligible for admission as a lay advocate upon successfully taking a comprehensive examination on the laws and rules applicable in the District Court, which examination shall be promulgated by the Admissions Committee with the approval of the Court, and administered by the Admissions Committee at least once each year or at such other intervals as may be ordered by the Court. Upon receiving a passing score on the examination and showing their moral fitness to practice law, such persons should receive a favorable report from the Admissions Committee and be admitted to the practice of law in this Court and all inferior District Courts. Thereafter, such lay advocates shall be held to the same standards, be entitled to the same rights, privileges, obligations, and duties, and be accorded all the honors to the same extent as any attorney admitted to practice before the Courts of the Nation.

(g) Reciprocity. Any attorney who shall have been admitted to practice in any Federal Court within the State of Oklahoma may be admitted to practice in this Court upon the motion of a member of the Bar, in open Court, and the filing of a written application without the necessity of appearing before the Admissions Committee.

(h) Attorneys for the United States. Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies.

(i) Admission of Non-Resident Attorney for Limited Practice. Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or of the highest Court of any Indian Tribe or State of the United States, who is a non-resident of the State of Oklahoma, may be admitted to the Bar of this Court for limited practice upon oral application and without compliance with subsection (b) hereof. Limited practice shall be restricted to appearance and practice in a case or proceeding then on file in the court.

(j) Temporary Admission. Any attorney who appears eligible for admission to the Bar of this Court may in the discretion of a District Judge or Justice of the Supreme Court be granted temporary admission to practice in a pending case.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

## **Rule 102.     Discipline**

(a) Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the Code of Professional responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court shall be subject to reprimand, suspension, disbarment, or such other

disciplinary action as the Court deems appropriate.

(b) Summary Discipline. For misconduct in the presence of the Court, an order may issue forthwith administering such discipline as the Court deems appropriate, including a fine of not to exceed Five Hundred Dollars (\$500.00) or confinement of not to exceed ten (10) days, but summary discipline shall not include the right of the Court to suspend or disbar the offending lawyer from practicing in this Court. An attorney summarily disciplined as herein provided may appeal any punishment imposed hereunder to the Supreme Court, or if summary discipline is administered by a Justice, to the remaining Justices of the Court sitting en banc. The Justice or Judge administering the discipline shall not sit in the hearing of such an appeal. In order to allow such an appeal the discipline imposed will, upon request of the attorney, and by his posting a supersedeas bond in a reasonable amount to be fixed by the Court, be stayed for seven (7) days to allow such attorney to perfect an appeal. If no written appeal be filed within said seven (7) days, the punishment so imposed shall be forthwith administered unless in the interim the Judge or Justice imposing same has rescinded or modified his original action. Nothing herein provided is intended to preclude the right to the disciplined attorney to appeal direct to the Supreme Court.

(c) Conviction; Discipline in Other Court. Any member of the Bar of this Court convicted in either federal, state, or District Court of a felony or other crime punishable by banishment or involving moral turpitude, and any member disbarred or suspended from practice in any Court of competent jurisdiction, shall be suspended automatically from practice in this Court and may be reinstated only on written application showing cause why he should be reinstated, excepting however that in the event the discipline imposed in the other jurisdiction has been stayed, the discipline imposed in this Court shall likewise be deferred until such stay expires in the other jurisdiction. And provided further however a member of the Bar of this Court shall not be automatically similarly disciplined in this Court in the event the member is disciplined in some other jurisdiction if this Court determines upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

- (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) that the imposition of the same discipline by the Court would result in grave injustice; or
- (4) that the misconduct established is deemed by the Court to warrant substantially different discipline,

(d) An attorney of this Bar who is under investigation for misconduct, or who is facing disbarment proceedings in any Court of competent jurisdiction, who resigns from the Bar of the investigating jurisdiction, or who voluntarily permits his license to practice therein to terminate, shall be, by this Court, deemed to have been disbarred in the other jurisdiction and shall forthwith be disbarred from practicing in this Court.

(e) **Disciplinary Procedure.** Proceedings to discipline a member of the Bar of this Court, except as set forth in paragraphs (b) and (c) of this section, shall be upon an order to show cause issued by the Court, reciting the charges and fixing notice of the date of hearing, which shall not be less than thirty (30) days from the date of the notice, and reciting the place of the hearing and such hearing procedures as may be reasonable and consistent with due process. Notice to the attorney shall be made by personal service or by registered or certified mail, addressed to the respondent-attorney at his last known address. The Court may, in its discretion, refer any Bar disciplinary matter to its Committee on Admissions and Grievances for proper investigation and recommendation to the Court, either before or after issuance of an order to show cause. The recommendation of the Committee on Admissions and Grievances, if same suggests disbarment or suspension, shall not be adopted until the procedure set forth above has been followed. Any attorney disbarred or suspended pursuant to these rules may apply to the Court for leave to petition for reinstatement.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; renumbered from Rule 101 to Rule 102 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 103. Appearance and Withdrawal of Counsel**

(a) **Appearance.** Any attorney appearing for a defendant in a civil or criminal case shall enter his appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk of this Court. In the event a plaintiff should change counsel or add additional counsel, the new or additional counsel for such plaintiff shall enter his appearance on a form to be provided by the Clerk for that purpose.

(b) **Certificate of Familiarity with Local Court Rules.** Every person, upon entering an appearance in any case or proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Rules of this Court, specifically including all of the most recent published amendments to them.

- (1) Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the clerk, provided however, for good cause shown, the Clerk may in his discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.
- (2) The same certification shall also be required of every other person thereafter participating in such cause or proceeding.
- (3) The Clerk shall keep a master file of all such certificates. Once a person has so certified his familiarity, he shall not be required to do so in subsequent cases unless required by order of the Court. A Judge may authorize the Clerk to waive the requirement as to certain persons or categories of persons when such will best serve the administration of justice.

(c) **Withdrawal from Case.** In any action, wherein appearance is made through counsel,



there shall be no withdrawal by counsel except by leave of Court upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by other counsel or in propria persona, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; renumbered from Rule 102 to Rule 103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Rule 104. Courtroom Decorum**

(a) The Canons of Professional Ethics were adopted by the American Bar Association and this Court as a general guide, because as stated in the preamble of the American Bar Association Canons, "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble further admonishes that "the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned." In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes and the usages, customs, and practice of the Bar of this Court. These Canons, and the statutes and common law of the Nation relating to attorney conduct, are applicable to all attorneys and lay advocates who practice before this Court.

(b) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this Court shall:

- (1) Be punctual in attendance at Court.
- (2) Refrain from addressing one another in Court by their first names.
- (3) Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained.
- (4) See that only one of them is on his feet at a time unless an objection is being made.
- (5) Refrain from approaching jurors who have completed a case unless authorized by the Court.
- (6) Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial and take them up with the Court and opposing counsel in chambers. If, however, it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained, and opposing counsel should be openly invited to accompany him.

- (7) Refrain from employing dilatory tactics.
- (8) Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.
- (9) Hand all papers intended for the Court to see to the Clerk, who, in turn will pass them up to the judge.
- (10) Hand to the Clerk, rather than the Court Reporter, any exhibits to be marked which have not previously been identified.
- (11) Advise clients, witnesses, and other interested persons concerning rules of decorum to be observed in Court.
- (12) Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may; upon request, grant permission to approach the witness or the exhibit, as the case may be, for that purpose.
- (13) Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument which has been previously admitted in evidence.
- (14) Not conduct a trial when they know, prior thereto, that they will be necessary witnesses, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.
- (15) Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill-feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.
- (16) Rise when addressing or being addressed by the Court.
- (17) Refrain from assuming an undignified posture. Always be attired in a proper and dignified manner as befits an officer of the Judicial Branch of the Government and abstain from any apparel or ornament calculated to attract attention to oneself.
- (18) Comply, along with all other persons in the courtroom, with the following:
  - (A) No tobacco in any form will be permitted at any time.

- (B) No propping of feet on tables or chairs will be permitted at any time.
- (C) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom, except with permission of the bailiff.
- (D) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.
- (E) No talking or other unnecessary noises will be permitted while Court is in session.
- (F) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.
- (G) All male lawyers and male Court personnel must wear both coats and ties; women lawyers and women Court personnel must be suitably attired.
- (H) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.
- (I) Use of cellular telephones or similar devices is strictly forbidden unless leave is granted by the Court. If such a device rings or otherwise generates noise while Court is in session, the device may be seized by the Bailiff and returned only after the end of the day's session.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; renumbered from Rule 103 to Rule 104 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 105. Attorney Conference with Respect to Discovery Motions**

With respect to all motions or objections relating to discovery, the District Court shall refuse to hear any such motion or objection unless counsel for the movant shall first advise the Court in writing that he has conferred in good faith with opposing counsel, but that after a sincere attempt to resolve differences has been made, the attorneys have been unable to reach an accord.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; renumbered from Rule 104 to Rule 105 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 106. Free Press - Fair Trial**

(a) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would not expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with

which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would not expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(c) From the time of arrest, issuance of an arrest warrant or the filing of a criminal complaint in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would not expect to be disseminated by any means of public communication, relating to that matter and concerning:

- (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;
- (2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
- (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law; The possibility of a plea of guilty to the offense charged or a lesser offense;
- (5) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(d) The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest, including time and place of arrest, resistance, pursuit, and use of weapons, the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the

case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

(e) During a jury trial on any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would not expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

(f) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(g) All Court supporting personnel, including among others, Seminole Nation Lighthorse Police Officers and Bureau of Indian Affairs Police and their deputies, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters and employees or subcontractors retained by the court-appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not a part of the public records of the Court. Such personnel are also forbidden from divulging information concerning in camera arguments and hearings held in chambers or otherwise outside the presence of the public.

(h) In a widely publicized or sensational civil or criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. Such a special order may be addressed to some or all of the following subjects:

- (1) A proscription of extrajudicial statements by participants in the trial, including lawyers, parties, witnesses, jurors and court officials, which might divulge prejudicial matter not of public record in the case.
- (2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.
- (3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain

from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

- (4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by the District Court, and that no photograph be taken or sketch made of any juror within the environs of the Court.
- (6) Insulation of witnesses during the trial.
- (7) Specific provisions regarding the seating of spectators and representatives of news media, including:
  - (A) An order that no member of the public or news media representative be at any time permitted within the bar railing.
  - (B) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.

(i) The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a District Judge, whether or not Court is actually in session, is prohibited. A Judge may, however, permit

- (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, the broadcasting, television, recording, or photographing of investigative, ceremonial, or similar proceedings, and
- (2) the use of electronic or photographic equipment including recording apparatus by officers or employees of the Nation in the regular course of their business within their normal area of operation within the Courthouse when such will not interfere with the trial of the case.

(j) As used in this Rule the term "environs" means any place in or near the District Courtroom, or within the building in which the District Courtroom is situated.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; renumbered from Rule 105 to Rule 106 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 107. Plan of the District Court for the Representation of Indigent Defendant**

(a) For whom Appointed. As designated and provided by the District Court for criminal defendants, and parents, and children in child custody actions when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when

the Court has adequate funds, not otherwise obligated, to pay for such representation.

(b) Appointment Panel. Private attorneys will be appointed by the Judges of this Court. Said appointments shall be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Judges of this Court. If sufficient attorneys volunteer to be placed on this panel to satisfy the needs of the Court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided, that the Court may still request the assistance of such attorneys if necessary or useful to the Court.

(c) Pay. Appointees may be compensated at a rate determined by a Judge of this Court but not to exceed Thirty Dollars (\$30.00) per hour for time expended in court and Twenty Dollar (\$20.00) per hour for time expended out of court in addition to reasonable expenses as determined by a Judge of this Court as the Court budget and court fund will allow. The compensation for legal services shall not exceed One Thousand Dollars (\$1,000.00) for an attorney in a case in which a crime punishable by banishment is charged, or in termination of parental rights cases, including all representation before the Supreme Court through appeal of the case, and shall not exceed Four Hundred Dollars (\$400.00) for an attorney in a case in which a misdemeanor is charged including all representation before the Court through appeal of the case. Compensation in post-conviction cases, probation and parole revocation hearing and material witness matters shall not in any event exceed Two Hundred Fifty Dollars (\$250.00) per attorney per case. In all events, the compensation paid shall be in that amount approved by the Court.

(d) Claims. Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within forty- five (45) days after services are completed.

(e) Obligation of Court-Appointed Counsel to Disclose Client's Assets. If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(f) Refusal to Represent Indigents. An attorney who neglects or refuses to serve as counsel for an indigent or child in this Court when duly appointed by a Judge may have his name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without his consent, to represent more than one person each calendar year without receiving compensation therefore as provided by this rule. For good cause shown, the Court may excuse as attorney from an appointment although such action is not favored. No Government attorney shall be appointed in any such cases.

(g) Persons Obligated To Refund Court Fund For Attorney Fees Or Pay Attorneys. Every indigent person, and the parents of every child, for whom a court appointed attorney is obtained, shall be liable to the Nation for all sums paid to their court appointed counsel as fees and expenses in the action, or all sums which the court, upon motion of appointed counsel, taxes against that person as the fair costs of such representation at the conclusion of the case, which amount shall not exceed the amount which the court would have paid from the court fund or court budget if funds for payment had been available. This liability may be enforced, by motion filed in the case

by an attorney for a party to the action, the Attorney General, or the Prosecuting Attorney, at any time after the amount of such attorney's fees and costs have been set by the Court, and process may be issued as in civil cases to enforce this liability. All amounts recovered shall be repaid into the Court fund or Court budget, and if the attorney has not received payment for his fees and costs, the Clerk of the Court shall forthwith pay over to the attorney such amounts as he is entitled to pursuant to the order of the Court setting the attorney fees and costs.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012; renumbered from Rule 106 to Rule 107 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **OATH OF ATTORNEY**

I do solemnly swear:

I will support the Constitution of the United States, and the Constitution of the Seminole Nation. I will maintain the respect due to Courts of justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which I am charged.

I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's causes for lucre or malice.

So help me God.

[HISTORY: Enacted by TO 2010-01, June 5, 2010; approved by BIA February 2, 2012.]

**TITLE 1A  
ARTS & CRAFTS  
INDEX**

<b>TITLE 1A ARTS &amp; CRAFTS INDEX .....</b>	<b>i</b>
<b>TITLE 1A ARTS AND CRAFTS .....</b>	<b>1</b>
<b>CHAPTER ONE ARTS AND CULTURE COMMITTEE.....</b>	<b>1</b>
Section 101. Arts and Culture Committee; Qualification; Appointment; Removal .....	1
Section 102. Officers .....	2
Section 103. Duties of the Arts and Culture Committee .....	2
Section 104. Term .....	3
Section 105. Arts and Culture Committee; Compensation .....	3
Section 106. Arts and Culture Committee Governed by General Council .....	3
<b>CHAPTER TWO REGISTRY OF ARTISANS OF THE SEMINOLE NATION OF OKLAHOMA.....</b>	<b>4</b>
Section 201. Definition of Artisans .....	4
Section 202. Registry of Seminole Artisans .....	4
Section 203. Certification of Artisans .....	4
<b>CHAPTER THREE PRINCESS COMMITTEE.....</b>	<b>5</b>
Section 301. Establishment of Princess Committee: Qualifications .....	5
Section 302. Term .....	5
Section 303. Appointment and Removal of Committee Members.....	5
Section 304. Duties.....	5
Section 305. Meetings .....	5
Section 306. Reports.....	6
Section 307. Effective Date; Program Years .....	6
Section 308. Appropriation of Funds .....	6

# **TITLE 1A ARTS AND CRAFTS**

## **CHAPTER ONE ARTS AND CULTURE COMMITTEE**

### **Section 101. Arts and Culture Committee; Qualification; Appointment; Removal**

(a) The Seminole Nation of Oklahoma shall officially recognize an Arts and Culture Committee, which shall be charged and empowered with the duties and responsibilities listed in Section 103 of Title 1A.

(b) The Arts and Culture Committee shall be a five (5) member Committee including at least two (2) members of the Seminole Nation.

- (1) The Arts and Culture Committee shall consist of a minimum of one (1) member of the General Council of the Seminole Nation of Oklahoma, preferably with experience in arts or culture such as teaching or creating art.
- (2) Committee members who are not Council members shall have experience in teaching art, creating art, or professional experience in an art-related field.
- (3) The Principal Chief shall appoint the members of the Arts and Culture Committee, subject to confirmation by the General Council.
- (4) The Principal Chief and Assistant Chief shall be ex officio, non-voting members of the Arts and Culture Committee.
- (5) At least three (3) official Committee members shall be in attendance in order to establish a quorum.

(c) The Principal Chief of the Seminole Nation of Oklahoma may at any time recall the appointment of any member of the Arts and Culture Committee for good cause shown, subject to the approval of a majority of the Council.

(d) Voting on agenda items by the Arts and Culture Committee shall be by roll call vote and shall be recorded by the Committee secretary.

(e) No member of the Committee shall be an employee of the Seminole Nation while serving on the Committee.

[HISTORY: Enacted by TO 2008-02, March 1, 2008.]

## **Section 102. Officers**

The first meeting of the Arts and Culture Committee, after at least three (3) appointments are confirmed by the General Council, shall be organized by the Principal Chief. At the first meeting, the Arts and Culture Committee shall elect a chairman, vice chairman and secretary from within its membership.

[HISTORY: Enacted by TO 91-17, December 7, 1991; amended by TO 2008-02, March 1, 2008.]

## **Section 103. Duties of the Arts and Culture Committee**

The Arts and Culture Committee shall:

- (a) ensure the Nation's compliance with federal and tribal laws governing Indian arts and crafts activities;
- (b) make recommendations to the General Council of the Seminole Nation regarding proposed legislative action to ensure compliance with federal and tribal laws governing Indian arts, crafts and cultural activities;
- (c) maintain the Registry of Seminole Artisans;
- (d) exercise such other duties as shall be consistent with the general oversight and protection of Seminole artisans and Seminole arts and crafts;
- (e) develop short- and long-range plans for the immediate and future needs of the members of the Nation for the arts and cultural programs that are provided to the members of the Nation;
- (f) develop of a non-profit foundation for arts and culture and youth activities related to art and culture for members of the Seminole Nation;
- (g) recommend to the General Council further development of programs, policies and laws for the Nation and Oklahoma regarding art and culture;
- (h) prepare and submit an annual report of activities, findings and proposals for review by the General Council as provided for in Section 106 of Title 1A; and
- (i) utilize professional Seminole Nation and Oklahoma art educators, citizens in the community, artists and students as advisory resources to the Arts and Culture Committee.

[HISTORY: Enacted by TO 91-17, December 7, 1991; amended by TO 2008-02, March 1, 2008.]

**Section 104. Term**

The term of Arts and Culture Committee members shall be four (4) years from the date of appointment by the Principal Chief and confirmation of the General Council.

[HISTORY: Enacted by TO 2008-02, March 1, 2008.]

**Section 105. Arts and Culture Committee; Compensation**

The provision of Title 16, Section 602 setting a stipend for all members of Committees, Boards, and Task Forces of the Seminole Nation shall apply to persons appointed to the Arts and Culture Committee who attend the meetings thereof. If the amount paid to members of Committees, Boards and Task Forces of the Seminole Nation is modified in Title 16, Section 602, the modifications shall also apply to the Arts and Culture Committee.

[HISTORY: Enacted by TO 2008-02, March 1, 2008.]

**Section 106. Arts and Culture Committee Governed by General Council**

(a) It is to be understood and directed that the Arts and Culture Committee will be extended the utmost and highest cooperation of all concerned while in the performance of its duties and will be working in the best interests of the citizens of the Seminole Nation of Oklahoma.

(b) The Arts and Culture Committee is governed by the General Council and shall submit an annual report of activities, findings and proposals for review at the Quarterly Meeting of the General Council held the first Saturday of September each year.

[HISTORY: Enacted by TO 2008-02, March 1, 2008.]

## **CHAPTER TWO**

### **REGISTRY OF ARTISANS OF THE SEMINOLE NATION OF OKLAHOMA**

#### **Section 201. Definition of Artisans**

An artisan is a person who identifies himself as an artist or craftsman.

[HISTORY: Enacted by TO 91-17, December 7, 1991.]

#### **Section 202. Registry of Seminole Artisans**

The Seminole Nation of Oklahoma hereby creates a Registry of Seminole Artisans, which shall be maintained by the Arts and Culture Committee of the Seminole Nation. Every artisan who is a member of the Seminole Nation is entitled to be listed on the Registry of Seminole Artisans. Every artisan who can prove through documentation that he is a lineal descendant of a Seminole citizen whose name appears on the final rolls of the Seminole Nation of Oklahoma approved pursuant to Section 2 of the Act of April 26, 1906 (34 Stat. 137) shall also be entitled to be listed on the Registry of Seminole Artisans, regardless of his tribal membership status.

[HISTORY: Enacted by TO 91-17, December 7, 1991.]

#### **Section 203. Certification of Artisans**

The Tribal Enrollment Office shall be responsible for verification of the status of any person entitled to be listed in the Registry of Seminole Artisans. The Tribal Enrollment Office shall issue a certificate for any tribal member artisan applying for such a certificate. The Tribal Enrollment Office shall issue a certificate to non-tribal members who qualify due to lineal descent from a Seminole citizen listed on the 1906 rolls, pursuant to general enrollment procedures set forth in Title 22 of the Code of Laws of the Seminole Nation. The Enrollment office shall provide the original certificate to the artisan applying for the certificate, and shall place a copy in the individual's enrollment file. The Enrollment Office shall place a copy of each certificate issued in a separate "Registry" file which shall be made accessible to the Arts and Culture Committee for purposes of maintenance of the Registry of Seminole Artisans. There shall be no fee for the certificate.

[HISTORY: Enacted by TO 91-17, December 7, 1991.]

## **CHAPTER THREE PRINCESS COMMITTEE**

### **Section 301. Establishment of Princess Committee: Qualifications**

The Seminole Nation of Oklahoma hereby officially recognizes a Princess Committee, which shall be charged and empowered with certain duties and responsibilities as specified herein. The Princess Committee shall be a three (3) member committee consisting of at least one (1) member of the Seminole Nation who has served as a Princess for the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2006-16, December 12, 2006; amended by TO 2020-01, March 7, 2020.]

### **Section 302. Term**

Princess Committee members shall serve a term of two (2) years.

[HISTORY: Enacted by TO 2006-16, December 12, 2006; amended by TO 2020-01, March 7, 2020.]

### **Section 303. Appointment and Removal of Committee Members**

The Principal Chief shall appoint the members of the Princess Committee, subject to confirmation by the General Council. The Principal Chief may, at any time, recall the appointment of any member of the Princess Committee for good cause shown, subject to the approval of a majority of the Council.

[HISTORY: Enacted by TO 2006-16, December 12, 2006.]

### **Section 304. Duties**

The duties of the Princess Committee shall include:

(a) Representation of the Seminole Nation by the Seminole Nation Princess at various functions.

(b) Attending other tribally sponsored activities that pertain to the preservation or promotion of Seminole cultural, historical, and recreational customs.

[HISTORY: Enacted by TO 2006-16, December 12, 2006.]

### **Section 305. Meetings**

At the first meeting of the Princess Committee, the members of the Committee shall elect a Chairman. The Princess Committee shall meet at least quarterly. No member shall be recognized as a member of the Princess Committee until notice in the form of a General Council resolution approving the appointment has been received by the Board. At least two (2) official Committee

members shall be present in order to establish a quorum. Voting shall be by roll call vote. Committee members shall receive a meeting stipend from an appropriate fund in accordance with Title 16, Section 602 of the Code of Laws of the Seminole Nation. All other procedures of the Princess Committee not contained herein shall be governed by the By-Laws of the Princess Committee.

[HISTORY: Enacted by TO 2006-16, December 12, 2006; amended by TO 2020-01, March 7, 2020.]

**Section 306. Reports**

The Princess Committee Chairman shall provide quarterly reports to the General Council showing expenditures made for each sponsored activity and specifying funds remaining for award purposes.

[HISTORY: Enacted by TO 2006-16, December 12, 2006.]

**Section 307. Effective Date; Program Years**

The effective date of this Program shall be October 1, 2006. Each program year shall be on a fiscal year basis, commencing on October 1 and ending on September 30 of the following year. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient funds are available in the "Princess Committee Fund" and provided further that the General Council has by resolution approved a budget for such program year.

[HISTORY: Enacted by TO 2006-16, December 12, 2006.]

**Section 308. Appropriation of Funds**

An initial appropriation of twenty thousand dollars (\$20,000.00) from the Seminole Nation Development Authority shall be appropriated for the "Seminole Nation Princess Committee" pursuant to a resolution enacted by the General Council. Any and all additional appropriations shall be made by resolution of the General Council. All funds appropriated pursuant to this Act shall be placed in a separate interest-bearing trust account entitled "Seminole Nation Princess Committee." All interest accruing from funds in said trust account shall be incorporated into the Programs of the Princess Committee.

[HISTORY: Enacted by TO 2006-16, December 12, 2006.]



**TITLE 2**  
**ATTORNEY GENERAL**  
**INDEX**

<b>TITLE 2 ATTORNEY GENERAL INDEX.....</b>	<b>i</b>
<b>TITLE 2 ATTORNEY GENERAL .....</b>	<b>1</b>
Section 101. Department of Justice Created.....	1
Section 102. Establishment.....	1
Section 103. Chief Legal Officer .....	1
Section 104. Subordinate Staff.....	1
Section 105. Duties .....	2
Section 106. Investigation by the Attorney General .....	2
Section 107. Investigators.....	3
Section 108. Conduct of Litigation Reserved to Department of Justice .....	4
Section 109. Conduct and Argument of Cases .....	4
Section 110. Attorney General to Advise General Council.....	5
Section 111. Attorney General to Advise Department Heads .....	5
Section 112. Force and Effect of Opinions of the Attorney General .....	5
Section 113. Publication and Distribution of Opinions.....	6
Section 114. Report of Business and Statistics .....	6
Section 115. Expenditures .....	6

## **TITLE 2**

### **ATTORNEY GENERAL**

#### **Section 101. Department of Justice Created**

There shall be a Department of Justice within the Executive Branch of the government of the Seminole Nation of Oklahoma to be known as the Justice Department of the Seminole Nation of Oklahoma. All functions of the Department of Justice are vested in the Attorney General except those that are specifically excepted by this Title or other laws or ordinances of the Seminole Nation of Oklahoma.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 102. Establishment**

(a) There is hereby established the office of Attorney General of the Seminole Nation of Oklahoma. The Office of the Attorney General is a component of the Department of Justice.

(b) The Attorney General shall be a practicing attorney, licensed to practice law in the State of Oklahoma, and admitted to practice in the State Courts of Oklahoma and the Federal District Court for the Eastern District of Oklahoma.

(c) The Attorney General shall be appointed by the General Council for a term of three (3) years. The compensation to be paid to the Attorney General shall be set by the General Council.

[HISTORY: Enacted by TO 70-5, June 6, 1970; codified by TO 91-12, November 16, 1991; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 103. Chief Legal Officer**

The Attorney General shall be the director of the Justice Department and serve as the chief legal officer of the Seminole Nation of Oklahoma. The Attorney General shall be appointed by and serve at the pleasure of the General Council.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 104. Subordinate Staff**

(a) The Attorney General is hereby empowered to create subordinate positions within the Office of the Attorney General and is hereby empowered to appoint and supervise subordinate attorney staff including a First Assistant Attorney General, Assistant Attorney Generals and Special Prosecutors as funds permit. Any Assistant Attorney Generals and Special Prosecutors shall be appointed with the advice and consent of the General Council.

(b) In case of a vacancy in the office of Attorney General, or of his absence or disability, the First Assistant Attorney General may exercise all the duties of that office.

(c) When, by reason of absence, disability, or vacancy in office, neither the Attorney General nor the First Assistant Attorney General is available to exercise the duties of the office of Attorney General, other Assistant Attorneys General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

### **Section 105. Duties**

The duties of the Attorney General are as follows:

(a) To attend all regular and special meetings of General Council, to give advice and counsel on all legal matters pertaining to the Constitution and the business of the General Council.

(b) To give legal advice and counsel, upon request, to the Chief and Assistant Chief, as well as to all committees and other bodies and officials established by the Constitution or created by the General Council, on matters pertaining to actions in their official capacities and duties.

(c) To draft in proper form all ordinances and resolutions for presentation to the General Council. When oral resolutions are passed by the General Council, to draft and submit for approval by the Principal Chief written versions of such oral resolutions.

(d) To codify and organize all ordinances of the Seminole Nation.

(e) To investigate all matters requested by the Chief or the General Council, and to make reports and recommendations in such matters.

(f) To represent the Seminole Nation of Oklahoma and its officers in any litigation when so directed by the Chief or the General Council; provided, however, that the Attorney General shall not represent the Seminole Nation of Oklahoma in any claim against the United States of America in the Court of Claims, unless specifically employed by the Seminole Nation of Oklahoma for that purpose, by contract duly approved by the Secretary of the Interior. Nothing in this ordinance shall be construed to employ any attorney as a claims attorney.

[HISTORY: Enacted by TO 70-5, June 6, 1970; codified by TO 91-12, November 16, 1991; amended by TO 2015-10, approved and effective October 17, 2015.]

### **Section 106. Investigation by the Attorney General**

(a) If, by the Attorney General's own inquiries or as a result of complaints, the Attorney General has reasonable cause to believe that a person has engaged or is engaging in an

act or practice that violates any provisions of the Seminole Nation Constitution or Seminole Nation Code of Laws, he may investigate.

(b) For the purpose of the investigation, the Attorney General may administer oaths, subpoena witnesses, adduce evidence, and require the production of any relevant matter.

(c) If matters that the Attorney General requires to be produced are located outside the Seminole Nation's jurisdiction as provided in Article XV of the Seminole Nation Constitution, the Attorney General may designate representatives, including officials of the Indian Tribe or State in which the matter is located, to inspect the matter on the Attorney General's behalf. The person subpoenaed may make the matter available to the Attorney General at a convenient location within the Seminole Nation or pay the reasonable and necessary expenses for the Attorney General or the Attorney General's representative to examine the matter at the place where it is located, provided that expenses shall not be charged to a party not subsequently found to have engaged in an act or practice in violation of the Seminole Nation Constitution or Seminole Nation Code of Law, he may investigate.

(d) The Attorney General shall state the time within which the subpoenaed party has to respond in the subpoena. After a subpoena has been served and on or before the time to respond to the subpoena, a person subpoenaed under this section may file a motion to extend the return day, or to modify or quash the subpoena, stating good cause, in the Seminole Nation District Court.

(e) A person subpoenaed under this section shall comply with the terms of the subpoena, unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the return day of the subpoena, or issued any other order with respect to the subpoena prior to its return day.

(f) If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the Attorney General may apply to the Seminole Nation District Court for an order compelling compliance.

(g) The procedures available to the Attorney General under this section are cumulative and concurrent, and the exercise of one procedure by the Attorney General does not preclude or require the exercise of any other procedure.

[HISTORY: Enacted by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 107. Investigators**

(a) The Attorney General is hereby authorized to commission qualified investigators of the Attorney General's office as peace officers with the authority to maintain public order, safety, and health by the enforcement of all laws or orders of this Nation.

(b) The Attorney General's investigators serve under the direction of the Attorney General, and shall perform such services as are necessary in the investigation of criminal activity or preparation of civil litigation within the Seminole Nation of Oklahoma. Such investigators,

when carrying out their assigned duties, shall be agents of the Seminole Nation with full protection under the Nation's rights of sovereign immunity.

(c) If the Attorney General's investigator is certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training, or some other comparable training for peace officers, the investigator shall be eligible to be commissioned as a peace officer and upon such a commission shall have the powers now, or hereafter, vested by law in peace officers and, while in the performance of official duties as an investigator for the Attorney General or pursuant to any cross-deputation agreement, shall have jurisdiction in the Seminole Nation and pursuant to any cross-deputation agreement under which he receives a further commission.

(d) "Peace officer" as used herein shall mean any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement of all laws or orders of this Nation and who is authorized to bear arms in execution of his responsibilities.

(e) "Qualified" as used herein shall mean that said investigator is certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training or some other comparable certifying school or agency for peace officers; and where a proper background investigation has been conducted utilizing the Federal Bureau of Investigation and Oklahoma State Bureau of Investigation, with fingerprints to be taken and sent to the Federal Bureau of Investigation.

[HISTORY: Enacted by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 108. Conduct of Litigation Reserved to Department of Justice**

Except as otherwise authorized by specific laws of the Seminole Nation, the conduct of litigation in which the Seminole Nation of Oklahoma, or an agency or officer thereof, is a party is reserved to the Department of Justice, and shall be conducted under the direction of the Attorney General.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 109. Conduct and Argument of Cases**

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General shall conduct and argue suits and appeals in the Supreme Court of the Seminole Nation of Oklahoma.

(b) When the Attorney General considers it in the interests of the Seminole Nation of Oklahoma, he may personally conduct and argue any case in the District Court of the Seminole Nation of Oklahoma in which the Seminole Nation of Oklahoma is interested or he may direct any officer of the Department of Justice to do so.

(c) As necessary for the assertion or protection of any right or interest of the Seminole Nation, the Attorney General shall have authority:

- (1) to institute or prosecute any criminal action or proceeding;
- (2) to institute, prosecute, or intervene in any civil action or proceeding;

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 110. Attorney General to Advise General Council**

The Attorney General shall give his advice and opinion on questions of law when requested by the General Council. Unless requested in the form of an official attorney general opinion, any advice the Attorney General gives to the General Council shall be and remain confidential and subject to the attorney-client privilege.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 111. Attorney General to Advise Department Heads**

The head of a department or an agency of the Seminole Nation of Oklahoma may request the opinion of the Attorney General on questions of law arising in the administration of that department or agency.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

#### **Section 112. Force and Effect of Opinions of the Attorney General**

The following shall govern the force and effect given the opinions of the Attorney General:

- (a) Official opinions of the Attorney General shall be followed by other departments.
- (b) In giving his official opinions, the actions of the Attorney General are quasi-judicial and his opinions officially define the law unless a later decision of the Courts of the Seminole Nation of Oklahoma is contrary thereto.
- (c) Administrative personnel should regard the opinions of the Attorney General as law until withdrawn by the Attorney General or overruled, or modified, by the courts.
- (d) Opinions of the Attorney General should be considered as confined to specific questions therein considered and not as controlling in determining other questions not considered.
- (e) A question once fully considered and answered by one Attorney General should not be reconsidered by his successor, unless extraordinary circumstances exist, as determined in a resolution of the General Council.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

### **Section 113. Publication and Distribution of Opinions**

The Attorney General, from time to time, shall cause to be edited and printed such of his opinions as he considers valuable for preservation and may prescribe the manner for the distribution of the opinions.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

### **Section 114. Report of Business and Statistics**

The Attorney General, at the annual meeting of the General Council of the Seminole Nation of Oklahoma, shall report to the General Council on the business of the Department of Justice for the last preceding year, and on any other matters pertaining to the Department that he considers proper, including:

- (a) a statement of the appropriations which are placed under the control of the Department of Justice;
- (b) the statistics of crime under the laws of the Seminole Nation of Oklahoma; and
- (c) a statement of the number of cases involving the Seminole Nation of Oklahoma, civil and criminal, pending during the preceding year in any court.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

### **Section 115. Expenditures**

The Attorney General, or his authorized designee, shall sign all requisitions or vouchers for the advance or payment of moneys, including monthly invoices, appropriated for the Department of Justice subject to the same control as is exercised on like accounts by the Nation's Accounting Department.

[HISTORY: Enactment history unavailable; amended by TO 2015-10, approved and effective October 17, 2015.]

**TITLE 3  
CIVIL PROCEDURE CODE  
INDEX**

<b>TITLE 3 CIVIL PROCEDURE CODE INDEX .....</b>	<b>i</b>
<b>TITLE 3 CIVIL PROCEDURE CODE.....</b>	<b>1</b>
<b>GENERAL PROVISIONS.....</b>	<b>1</b>
Section 1. Title .....	1
Section 2. Scope of this Title .....	1
Section 3. Jurisdiction in Civil Actions .....	1
Section 4. No Effect upon Sovereign Immunity .....	1
Section 5. Court Costs not Charged to Nation .....	1
Section 6. Force of the common law .....	2
Section 7. Definitions .....	2
Section 8. Declaratory Judgment.....	3
Section 9. Effect of Previous Court Decisions .....	3
Section 10. C.F.R. Not Applicable .....	3
Section 11. Laws Applicable to Civil Actions .....	3
Section 12. Publication Notices.....	4
Section 13. Agencies, Boards and Commissions .....	4
<b>CHAPTER ONE COMMENCEMENT OF ACTION PLEADINGS, MOTIONS AND ORDERS .....</b>	<b>5</b>
Section 101. Commencement of Action .....	5
Section 102. One Form of Action .....	5
Section 103. Claim Defined .....	5
Section 104. Notice of Pendency of Action .....	5
Section 105. Notice of Pendency Contingent upon Service .....	5
Section 106. Special Notice for Actions Pending in Other Courts.....	5
Section 107. Pleadings Allowed; Form of Motions .....	6
Section 108. General Rules of Pleading .....	6
Section 109. Pleading Special Matters .....	8
Section 110. Form of Pleadings, Motions, and Briefs .....	9
Section 111. Signing of Pleadings.....	10
Section 112. Defenses and Objections – When and How Presented – By Pleading or Motion –Motion for Judgment on the Pleadings.....	10



Section 113.	Final Dismissal on Failure to Amend .....	13
Section 114.	Counterclaim and Cross-Claim .....	14
Section 115.	Counterclaim: Effect of the Statutes of Limitation .....	15
Section 116.	Counterclaims Against Assigned Claims .....	16
Section 117.	Third-Party Practice.....	16
Section 118.	Amended and Supplemental Pleadings .....	17
Section 119.	Pre-Trial Procedure; Formulating Issues .....	18
Section 120.	Lost Pleadings .....	19
Section 121.	Tenders of Money or Property .....	19
Section 122.	Dismissal of Actions.....	19
<b>CHAPTER TWO PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS.....</b>		<b>21</b>
Section 201.	Issuance of Summons .....	21
Section 202.	Form of Summons .....	21
Section 203.	Who May Serve Process Personally.....	21
Section 204.	Service of Process by Mail .....	22
Section 205.	Service by Publication .....	22
Section 206.	Publication Service Upon Parties and the Unknown Successors of Named Parties .....	23
Section 207.	Publication Notice for Recovery of Money .....	24
Section 208.	Publication Notice in Quiet Title Actions.....	24
Section 209.	Completion of Publication Service.....	24
Section 210.	Entry of Default on Party Served by Publication .....	25
Section 211.	Vacating Default Judgments Where Service is by Publication.....	25
Section 212.	Certain Technical Errors Not Grounds for Vacating Judgment .....	26
Section 213.	Meaning of Successors for Publication Purposes .....	26
Section 214.	Minimum Contacts Required for Effective Long Arm Service .....	26
Section 215.	Consent is Effective Substitute for Service .....	27
Section 216.	Service Pursuant to Court Order .....	27
Section 217.	Manner of Making Personal Service .....	27
Section 218.	Effect of Service of Some of Several Defendants .....	29
Section 219.	Service Upon Party Not Found Within the Nation.....	29
Section 220.	Territorial Limits of Effective Service .....	30
Section 221.	Return of Service of Process.....	31
Section 222.	Alternative Provisions for Service in a Foreign Country.....	31

Section 223.	Subpoena.....	32
Section 224.	Summons, Time Limit for Service .....	34
Section 225.	Service and Filing of Pleadings and Other Papers .....	34
Section 226.	Computation and Enlargement of Time .....	36
Section 227.	General Cases in Which Extraterritorial Service Authorized .....	37
<b>CHAPTER THREE PARTIES.....</b>		<b>38</b>
Section 301.	Parties Plaintiff and Defendant: Capacity.....	38
Section 302.	Joinder of Claims, Remedies, and Actions .....	39
Section 303.	Joinder of Persons Needed for Just Adjudication .....	39
Section 304.	Permissive Joinder of Parties .....	40
Section 305.	Misjoinder and Non-joinder of Parties .....	41
Section 306.	Interpleader .....	41
Section 307.	Class Actions .....	42
Section 308.	Derivative Actions by Shareholders and Members .....	45
Section 309.	Intervention.....	45
Section 310.	Substitution of Parties.....	46
<b>CHAPTER FOUR DEPOSITIONS AND DISCOVERY .....</b>		<b>48</b>
Section 401.	General Provisions Governing Discovery .....	48
Section 402.	Depositions Before Action or Pending Appeal.....	51
Section 403.	Persons Before Whom Depositions May Be Taken .....	53
Section 404.	Stipulations Regarding Discovery Procedure .....	54
Section 405.	Depositions Upon Oral Examinations .....	54
Section 406.	Depositions Upon Written Questions .....	58
Section 407.	Use of Depositions in Court Proceedings .....	59
Section 408.	Interrogatories to Parties.....	61
Section 409.	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.....	62
Section 410.	Physical and Mental Examination of Persons.....	63
Section 411.	Requests for Admission.....	63
Section 412.	Failure to Make Discovery: Sanctions.....	65
<b>CHAPTER FIVE WITNESSES .....</b>		<b>68</b>
Section 501.	Issue and Service of Subpoena for Witnesses .....	68
Section 502.	Subpoenas – Contents.....	68
Section 503.	Subpoena for Deposition. ....	68
Section 504.	Subpoena for Agency Hearings.....	68

Section 505.	Witness May Demand Fees – Exception .....	69
Section 506.	Disobedience of Subpoena.....	69
Section 507.	Attachment of Witness .....	69
Section 508.	Punishment for Contempt .....	69
Section 509.	Discharge When Imprisonment Illegal.....	70
Section 510.	Requisites of Attachment – Order of Commitment .....	70
Section 511.	Examination of Prisoner .....	70
Section 512.	Prisoner’s Custody During Examination .....	71
Section 513.	Witness Privileged.....	71
Section 514.	Witness May Demand Fees Each Day – Exception .....	71
Section 515.	Special Provisions for Agencies of the Nation .....	71
Section 516.	RESERVED.....	72
Section 517.	RESERVED.....	72
Section 518.	RESERVED.....	72
Section 519.	RESERVED.....	72
Section 520.	RESERVED.....	72
Section 521.	RESERVED.....	72
Section 522.	RESERVED.....	72
Section 523.	RESERVED.....	72
Section 524.	RESERVED.....	72
Section 525.	RESERVED.....	72
Section 526.	RESERVED.....	72
Section 527.	RESERVED.....	72
Section 528.	RESERVED.....	72
Section 529.	RESERVED.....	72
Section 530.	RESERVED.....	72
Section 531.	RESERVED.....	72
Section 532.	RESERVED.....	72
Section 533.	RESERVED.....	72
Section 534.	RESERVED.....	72
Section 535.	RESERVED.....	72
Section 536.	RESERVED.....	72
Section 537.	RESERVED.....	72
Section 538.	RESERVED.....	72

Section 539.	RESERVED.....	72
Section 540.	RESERVED.....	72
Section 541.	RESERVED.....	73
Section 542.	RESERVED.....	73
Section 543.	RESERVED.....	73
Section 544.	RESERVED.....	73
Section 545.	RESERVED.....	73
Section 546.	RESERVED.....	73
Section 547.	RESERVED.....	73
Section 548.	RESERVED.....	73
Section 549.	RESERVED.....	73
<b>SUBCHAPTER A TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION .....</b>		<b>74</b>
Section 550.	Privilege for Committee Testimony .....	74
Section 551.	Procedure for Claiming Privilege.....	74
Section 552.	Oaths.....	74
Section 553.	Penalties .....	75
Section 554.	Disgrace as Ground for Refusal to Testify .....	75
Section 555.	Prosecution.....	75
Section 556.	Fees and Mileage.....	76
<b>CHAPTER SIX JURORS .....</b>		<b>77</b>
Section 601.	Meeting for Selection of Jurors.....	77
Section 602.	Court Clerk’s Jury Selection Roll .....	78
Section 603.	Selection of Jurors.....	78
Section 604.	Drawing General Jury Panel .....	79
Section 605.	Use of Jury Panel.....	80
Section 606.	Certifying and Sealing Lists.....	80
Section 607.	Oath and Delivery of Envelopes .....	80
Section 608.	Sealing and Returning Juror Name Cards.....	81
Section 609.	Refilling Wheel .....	81
Section 610.	Summoning Jurors.....	81
Section 611.	On-Call System – Jurors.....	81
Section 612.	Drawing Trial Jurors from Panel.....	82
Section 613.	Qualifications and Exemptions of Jurors.....	82
Section 614.	Substantial Compliance .....	83

Section 615.	Oath to Jury.....	83
Section 616.	Discharge of Employee for Jury Service – Penalty.....	83
Section 617.	Civil Liability – Damages.....	83
<b>CHAPTER SEVEN TRIALS.....</b>		<b>85</b>
Section 701.	Trial Defined.....	85
Section 702.	Trial of Issues.....	85
Section 703.	Jury Trial of Right.....	85
Section 704.	Trial by Jury or By the Court.....	86
Section 705.	Assignment of Cases for Trial .....	86
Section 706.	Consolidation; Separate Trials.....	87
Section 707.	RESERVED.....	87
Section 708.	RESERVED.....	87
Section 709.	RESERVED.....	87
Section 710.	RESERVED.....	87
Section 711.	RESERVED.....	87
Section 712.	RESERVED.....	87
Section 713.	RESERVED.....	87
Section 714.	RESERVED.....	87
Section 715.	RESERVED.....	87
Section 716.	RESERVED.....	87
Section 717.	RESERVED.....	87
Section 718.	RESERVED.....	88
Section 719.	RESERVED.....	88
Section 720.	RESERVED.....	88
<b>SUBCHAPTER A IMPANELING JURY .....</b>		<b>89</b>
Section 721.	Summoning Jury .....	89
Section 722.	Causes for Challenging Jurors .....	89
Section 723.	Examination of Jurors.....	89
Section 724.	Alternate Jurors.....	89
Section 725.	Order of Challenges.....	90
Section 726.	Challenges to Jurors – Filling Vacancies.....	90
Section 727.	Alternate Method of Selecting Jury.....	90
Section 728.	Oath of Jury .....	91
Section 729.	Juries of Less Than Six - Majority Verdict.....	91

Section 730.	RESERVED.....	91
<b>SUBCHAPTER B TRIAL PROCEDURE .....</b>		<b>92</b>
Section 731.	Order of Trial .....	92
Section 732.	Taking of Testimony .....	93
Section 733.	Exceptions Unnecessary .....	93
Section 734.	Instruction to Jury – Objection.....	93
Section 735.	Uniform Jury Instructions.....	94
Section 736.	Objections to Instructions – Copies to Parties .....	94
Section 737.	View by Jury .....	94
Section 738.	Deliberations of the Jury.....	95
Section 739.	Admonition of Jury on Separation .....	95
Section 740.	Information After Retirement .....	95
Section 741.	When the Jury May be Discharged.....	95
Section 742.	Re-trial .....	96
Section 743.	Proof of Official Record .....	96
Section 744.	Determination of Foreign Law.....	97
Section 745.	Appointment and Duties of Masters.....	97
Section 746.	RESERVED.....	99
Section 747.	RESERVED.....	99
Section 748.	RESERVED.....	99
Section 749.	RESERVED.....	99
Section 750.	RESERVED.....	99
<b>SUBCHAPTER C VERDICT .....</b>		<b>100</b>
Section 751.	Findings by the Court .....	100
Section 752.	Delivery of Verdict.....	100
Section 753.	Requisites of Verdicts.....	100
Section 754.	General and Special Verdict .....	101
Section 755.	Special Verdict and Interrogatories .....	101
Section 756.	Jury Must Assess Amount of Recovery.....	102
Section 757.	Motions for a Directed Verdict and for Judgment Notwithstanding the Verdict .....	102
Section 758.	RESERVED.....	103
Section 759.	RESERVED.....	103
Section 760.	RESERVED.....	103
Section 761.	RESERVED.....	103

Section 762.	RESERVED.....	103
Section 763.	RESERVED.....	103
Section 764.	RESERVED.....	103
Section 765.	RESERVED.....	103
Section 766.	RESERVED.....	103
Section 767.	RESERVED.....	103
Section 768.	RESERVED.....	103
Section 769.	RESERVED.....	103
Section 770.	RESERVED.....	103
<b>SUBCHAPTER D MISCELLANEOUS TRIAL PROVISIONS .....</b>		<b>104</b>
Section 771.	Provisions Applicable to Trials by Court .....	104
Section 772.	Trial Docket .....	104
Section 773.	Trial Docket for Bar .....	104
Section 774.	Order of Trial of Cases Docketed.....	104
Section 775.	Time of Trial .....	104
Section 776.	Continuance .....	105
Section 777.	Trial by Judicial Panel .....	105
Section 778.	Bifurcated Jury Trials .....	105
<b>CHAPTER EIGHT PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS .....</b>		<b>107</b>
Section 801.	Seizure of Person or Property .....	107
Section 802.	Receivers Appointed by District Courts .....	107
Section 803.	Deposit in Court .....	107
Section 804.	Process in Behalf of and Against Persons Not Parties .....	107
Section 805.	Security – Proceedings Against Sureties .....	108
Section 806.	Execution .....	108
Section 807.	RESERVED.....	108
Section 808.	RESERVED.....	108
Section 809.	RESERVED.....	109
Section 810.	RESERVED.....	109
<b>SUBCHAPTER A INJUNCTIONS .....</b>		<b>110</b>
Section 811.	Injunction Defined.....	110
Section 812.	Cause for Injunction – Temporary Restraining Order.....	110
Section 813.	Temporary Restraining Order; Notice; Hearing; Duration .....	110
Section 814.	Temporary Restraining Order – Service .....	111

Section 815.	Preliminary Injunction.....	111
Section 816.	Preliminary Injunction – Criteria .....	111
Section 817.	Form and Scope of Injunction or Restraining Order .....	112
Section 818.	Employer and Employee; Interpleader; Constitutional Cases .....	112
Section 819.	Security .....	112
Section 820.	Use of Affidavits .....	113
Section 821.	Injunction by Defendant .....	113
Section 822.	Injunction is Equitable.....	113
Section 823.	Modification of Preliminary Injunction.....	114
Section 824.	Modification of Permanent Injunction .....	114
Section 825.	Injunctions Tried to the Court.....	114
Section 826.	Enforcement of Restraining Orders and Injunctions.....	114
Section 827.	RESERVED.....	114
Section 828.	RESERVED.....	114
Section 829.	RESERVED.....	115
Section 830.	RESERVED.....	115
<b>SUBCHAPTER B</b>	<b>REPLEVIN.....</b>	<b>116</b>
Section 831.	Order of Delivery – Procedure.....	116
Section 832.	Penalty for Damage of Property Subject to Order of Delivery .....	117
Section 833.	Undertaking in Replevin.....	118
Section 834.	Replevin Bond – Value.....	118
Section 835.	Order of Delivery .....	118
Section 836.	Order Returnable .....	119
Section 837.	Execution of Order .....	119
Section 838.	Re-Delivery on Bond.....	119
Section 839.	Exception to Sureties.....	119
Section 840.	Proceedings on Failure to Prosecute Action .....	119
Section 841.	Judgment – Damages – Attorney Fees .....	120
Section 842.	Officer May Break into Buildings.....	120
Section 843.	Compelling Delivery by Attachment.....	120
Section 844.	Improper Issue of Order of Delivery .....	120
Section 845.	Joinder of Cause of Action for Debt – Stay of Judgment.....	121
Section 846.	RESERVED.....	121
Section 847.	RESERVED.....	121



Section 848.	RESERVED.....	121
Section 849.	RESERVED.....	121
Section 850.	RESERVED.....	121
<b>SUBCHAPTER C ATTACHMENT.....</b>		<b>122</b>
Section 851.	Grounds for Attachment .....	122
Section 852.	Attachment Affidavit .....	123
Section 853.	Attachment Bonds .....	124
Section 854.	Order of Attachment.....	124
Section 855.	When Returnable.....	124
Section 856.	Order of Execution .....	124
Section 857.	Execution of Attachment Order .....	124
Section 858.	Service of Order .....	125
Section 859.	Re-delivery on Bond.....	125
Section 860.	RESERVED.....	125
<b>SUBCHAPTER D GARNISHMENT .....</b>		<b>126</b>
Section 861.	Limited Garnishment .....	126
Section 862.	Definitions .....	126
Section 863.	Recognition and Enforcement.....	128
Section 864.	Original Actions in the Seminole Nation District Court.....	129
Section 865.	Personal Jurisdiction.....	130
Section 866.	Notice .....	130
Section 867.	Garnishment of Wages .....	130
Section 868.	Administrative Processing Fee.....	132
Section 869.	Specific Orders With Exemptions From Certain Requirements .....	132
Section 870.	Savings Clause .....	133
Section 871.	Stay on Appeal .....	133
Section 872.	No Waiver of Sovereign Immunity. ....	133
<b>SUBCHAPTER E PROVISIONS RELATING TO ATTACHMENT AND GARNISHMENT .....</b>		<b>134</b>
Section 873.	RESERVED.....	134
Section 874.	RESERVED.....	134
Section 875.	RESERVED.....	134
Section 876.	RESERVED.....	134
Section 877.	RESERVED.....	134
Section 878.	RESERVED.....	134

Section 879.	RESERVED.....	134
Section 880.	RESERVED.....	134
Section 881.	RESERVED.....	134
Section 882.	RESERVED.....	134
Section 883.	RESERVED.....	134
Section 884.	RESERVED.....	134
Section 885.	RESERVED.....	134
Section 886.	RESERVED.....	134
Section 887.	RESERVED.....	134
Section 888.	RESERVED.....	134
Section 889.	RESERVED.....	134
Section 890.	RESERVED.....	134
<b>SUBCHAPTER F RECEIVERS.....</b>		<b>135</b>
Section 891.	Appointment of Receiver.....	135
Section 892.	Persons Ineligible .....	135
Section 893.	Oath and Bond .....	136
Section 894.	Powers of Receiver.....	136
Section 895.	Investment of Funds .....	136
Section 896.	Disposition of Property Litigated.....	136
Section 897.	Punishment for Disobedience of Court .....	137
Section 898.	Vacation of Appointment by Supreme Court .....	137
<b>SUBCHAPTER G EMINENT DOMAIN.....</b>		<b>139</b>
Section 899.	Who May Exercise Authority .....	139
Section 8100.	What Property May Be Condemned by Eminent Domain.....	139
Section 8101.	Condemnation of Property.....	139
Section 8102.	Complaint.....	140
Section 8103.	Process in Eminent Domain.....	140
Section 8104.	Appearance or Answer .....	141
Section 8105.	Amendment of Pleadings.....	142
Section 8106.	Substitution of Parties.....	142
Section 8107.	Dismissal of Action. ....	142
Section 8108.	Deposit and Its Distribution .....	143
Section 8109.	Costs .....	144
<b>CHAPTER NINE JUDGMENT .....</b>		<b>145</b>

Section 901.	Judgments – Costs.....	145
Section 902.	Default .....	146
Section 903.	Offer of Judgment .....	147
Section 904.	Judgment for Specific Act – Vesting Title .....	147
Section 905.	Summary Judgment .....	148
Section 906.	Declaratory Judgments .....	149
Section 907.	Entry of Judgment .....	149
Section 908.	New Trials – Amendments of Judgments.....	150
Section 909.	Relief from Judgment or Order.....	151
Section 910.	Harmless Error .....	151
Section 911.	Stay of Proceedings to Enforce a Judgment .....	152
Section 912.	Disability of a Judge .....	153
Section 913.	RESERVED.....	153
Section 914.	Judgment Against Child .....	153
Section 915.	Judgments as Liens.....	153
Section 916.	Discharge of Money Judgment Liens.....	154
Section 917.	Additional Case Deposits .....	154
Section 918.	Reversal by Supreme Court .....	154
Section 919.	Interest on Money Judgments .....	155
Section 920.	Exempt Property.....	155
Section 920.1.	Payment of Judgments from Individual Indian Moneys.....	156
<b>SUBCHAPTER A FOREIGN JUDGMENTS.....</b>		<b>157</b>
Section 921.	Definition .....	157
Section 922.	Filing and Status of Foreign Judgments .....	157
Section 923.	Grounds for Non-Recognition .....	157
Section 924.	Notice of Filing .....	158
Section 925.	Stay of Execution of Foreign Judgment .....	158
Section 926.	Fees.....	159
Section 927.	Optional Procedure.....	159
Section 928.	RESERVED.....	159
Section 929.	RESERVED.....	159
Section 930.	RESERVED.....	159
<b>SUBCHAPTER B EXECUTION .....</b>		<b>160</b>
Section 931.	Executions – Defined .....	160

Section 932.	Kinds of Execution.....	160
Section 933.	Property Subject to Levy .....	160
Section 934.	Property Bound After Seizure.....	160
Section 935.	Execution Must Be Issued within Five Years.....	160
Section 936.	Priority among Property .....	161
Section 937.	Priority Among Executions.....	161
Section 938.	Levy by Priority .....	161
Section 939.	Who Makes Levy .....	161
Section 940.	When Levy Void.....	162
Section 941.	Penalty for Unlawful Levy .....	162
Section 942.	Levy on Property Claimed by Third Person .....	162
Section 943.	Re-Delivery to Defendant.....	162
Section 944.	Notice of Sale of Chattels .....	163
Section 945.	Further Levy When Property Taken Insufficient .....	163
Section 946.	Filing and Indexing of Execution.....	163
Section 947.	Waiver of Appraisement.....	164
Section 948.	Return of Appraisement.....	164
Section 949.	When Lien Restricted.....	164
Section 950.	Notice of Sale of Realty.....	164
Section 951.	Confirmation of Sale .....	165
Section 952.	Police Chief's Deed.....	165
Section 953.	Advance of Printer's Fees.....	165
Section 954.	Demand for Printing Fees .....	166
Section 955.	Place of Sale.....	166
Section 956.	Other Executions of Realty Not Sold. ....	166
Section 957.	Levy on Realty Under Several Executions .....	166
Section 958.	Deed by Successor of Officer Making Sale .....	167
Section 959.	Payment to Defendant of Overages after Sale .....	167
Section 960.	Reversal of Judgment after Sale of Interest in Land .....	167
Section 961.	Execution on Judgment in Favor of Nation .....	167
Section 962.	Reappraisal Where Realty Twice Advertised for Sale .....	168
Section 963.	Return of Execution.....	168
Section 964.	Principal and Surety .....	169
Section 965.	Hearing on Assets.....	169

Section 966.	RESERVED.....	169
Section 967.	RESERVED.....	169
Section 968.	RESERVED.....	169
Section 969.	RESERVED.....	169
Section 970.	RESERVED.....	169
<b>SUBCHAPTER C CONTRIBUTION .....</b>		<b>170</b>
Section 971.	Joint Debtors or Sureties.....	170
Section 972.	Joint Tortfeasors – Contribution – Indemnity – Exemptions – Release, Covenant .....	170
Section 973.	RESERVED.....	171
Section 974.	RESERVED.....	171
Section 975.	RESERVED.....	171
Section 976.	RESERVED.....	171
Section 977.	RESERVED.....	171
Section 978.	RESERVED.....	171
Section 979.	RESERVED.....	171
Section 980.	RESERVED.....	171
<b>SUBCHAPTER D COSTS .....</b>		<b>172</b>
Section 981.	Affidavit in Forma Pauperis.....	172
Section 982.	False Swearing in Such Case .....	172
Section 983.	Costs Where Defendant Disclaims .....	172
Section 984.	Certain Costs Taxes at Discretion of Court .....	172
Section 985.	Costs To Successful Party as Matter of Course .....	173
Section 986.	Costs in Other Cases.....	173
Section 987.	Several Actions on Join Instrument.....	173
Section 988.	Clerk to Tax Costs.....	173
Section 989.	Cost of Notice or Other Legal Publication .....	173
Section 990.	Attorney Fees Taxable as Costs .....	174
Section 991.	Costs Defined .....	174
Section 992.	Authority of Court to Fix Cost Rates.....	175
<b>CHAPTER TEN LIMITATION OF ACTIONS.....</b>		<b>176</b>
Section 1001.	Limitations Applicable .....	176
Section 1002.	Limitation of Real Actions.....	176
Section 1003.	Persons Under Disability – In Real Property Actions .....	177
Section 1004.	Limitation of Other Actions .....	177

Section 1005. Persons under Disability in Actions other Than Real Property.....	178
Section 1006. Absence or Flight of Defendant .....	178
Section 1007. Limitation of New Action After Failure .....	178
Section 1008. Extension of Limitation .....	179
Section 1009. Statutory Bar Absolute.....	179
Section 1010. Law Governing Foreign Claims .....	179
Section 1011. Limitation of Building Construction Tort Claims .....	179
<b>CHAPTER ELEVEN RESERVED .....</b>	<b>180</b>
<b>CHAPTER TWELVE FORCIBLE ENTRY AND DETAINER .....</b>	<b>181</b>
Section 1201. Forcible Entry and Detention .....	181
Section 1202. Powers of Court.....	181
Section 1203. Extent of Jurisdiction.....	181
Section 1204. Issuance and Return of Summons .....	181
Section 1205. Service of Summons .....	182
Section 1206. Constructive Service of Summons .....	182
Section 1207. Answer of Affidavit by Defendant .....	182
Section 1208. Affidavit Form.....	183
<b>CHAPTER THIRTEEN HABEAS CORPUS .....</b>	<b>185</b>
Section 1301. Persons Who May Prosecute Writ.....	185
Section 1302. Application for Writ .....	185
Section 1303. Writ Granted.....	185
Section 1304. Direction and Command of Writ.....	185
Section 1305. Delivery to Chief of Seminole Nation Lighthouse Police Department .....	186
Section 1306. Service on Party Other Than Chief of Seminole Nation Lighthouse Police Department.....	186
Section 1307. Service When Person Not Found .....	186
Section 1308. Return and Enforcement of Writ .....	186
Section 1309. Manner of Return .....	186
Section 1310. Proceedings in Case of Sickness or Infirmary .....	187
Section 1311. Hearings and Discharge .....	187
Section 1312. Limits on Inquiry.....	187
Section 1313. Writ Upon Temporary Commitment .....	188
Section 1314. Writ May Issue to Admit to Bail .....	188
Section 1315. Notice to Interested Persons .....	188
Section 1316. Powers of Court.....	188

Section 1317. Officers Not Liable for Obeying Orders.....	188
Section 1318. Issuance of Warrant of Attachment.....	188
Section 1319. Arrest of Party Causing Restraint.....	189
Section 1320. Execution of Warrant of Attachment .....	189
Section 1321. Temporary Orders .....	189
Section 1322. Issuance and Service on Sunday .....	189
Section 1323. Issue of Process .....	189
Section 1324. Protection of Children and Incompetent Persons.....	190
Section 1325. Security for Costs Not Required .....	190
<b>CHAPTER FOURTEEN MANDAMUS .....</b>	<b>191</b>
Section 1401. Functions of Mandamus .....	191
Section 1402. Writ Not Issued Where Remedy at Law .....	191
Section 1403. Forms and Contents of Writs .....	191
Section 1404. When Peremptory Writ to Issue.....	191
Section 1405. Petition Upon Affidavit .....	192
Section 1406. Allowance and Service of Writ .....	192
Section 1407. Answer.....	192
Section 1408. Failure to Answer .....	192
Section 1409. Similarity to Civil Action.....	192
Section 1410. Recovery By Plaintiff .....	193
Section 1411. Damages Bar Further Actions.....	193
Section 1412. Penalty for Refusal or Neglect to Perform.....	193
<b>CHAPTER FIFTEEN QUO WARRANTO .....</b>	<b>194</b>
Section 1501. Quo Warranto – Relief Obtainable by Civil Action.....	194
Section 1502. Grounds for Action.....	194
Section 1503. Persons Whom May Bring Action .....	194
Section 1504. Judgment in Contest for Office .....	195
Section 1505. Judgment for Plaintiff.....	195
Section 1506. Enforcement of Judgment.....	195
Section 1507. Separate Action for Damages .....	195
Section 1508. Corporations.....	196
<b>CHAPTER SIXTEEN SMALL CLAIMS PROCEDURE.....</b>	<b>197</b>
Section 1601. Small Claims .....	197
Section 1602. Small Claims Affidavit .....	197

Section 1603.	Preparation of Affidavit .....	199
Section 1604.	Service of Affidavit .....	199
Section 1605.	Date for Appearance .....	199
Section 1606.	Transfer of Actions .....	200
Section 1607.	Counterclaim or Setoff .....	200
Section 1608.	Actions for Amounts Exceeding in Excess of Two Thousand Dollars .....	201
Section 1609.	Attachment or Garnishment; Other Matters .....	201
Section 1610.	Trial by Court .....	202
Section 1611.	Payment of Judgment .....	202
Section 1612.	Appeals .....	202
Section 1613.	Fees .....	202
Section 1614.	Costs .....	203
Section 1615.	Judgments Rendered Under Small Claims Procedure .....	203
Section 1616.	Fee for Docketing Judgments .....	203
Section 1617.	Other Actions in Small Claims Court .....	203



**TITLE 3**  
**CIVIL PROCEDURE CODE**  
**GENERAL PROVISIONS**

**Section 1.   Title**

This Title shall be known as the Seminole Nation Code of Civil Procedure.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 2.   Scope of this Title**

This Title governs the procedure in the Courts of the Nation in all suits of a civil nature whether cognizable as cases at law or in equity, except where a law or ordinance of the Nation specifies a different procedure. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 3.   Jurisdiction in Civil Actions**

The District Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Nation, the Indian Civil Rights Act of 1968, as amended, and any specific restrictions or prohibitions contained in Federal law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 4.   No Effect upon Sovereign Immunity**

Nothing in this Title shall be construed to be a waiver of the sovereign immunity of the Nation, its officers, employees, agents, or political subdivisions, or to be a consent to any suit beyond the limits now or hereafter specifically stated by applicable law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 5.   Court Costs not Charged to Nation**

The Nation, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be charged or ordered to pay any Court costs or attorney fees under this Title, but if these entities prevail in the action, the cost which such entities would have been required to pay may be charged as costs to the losing party.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 6. Force of the common law**

The customs and traditions of the Nation, to be known as the common law, as modified by the Constitution, statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect within the Nation in like force with any statute of the Nation insofar as the common law is not so modified, but all applicable law shall be liberally construed to promote their object.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 7. Definitions**

This Title incorporates all definitions included in Title 5, unless a different definition is included specifically in this Title.

(a) “Attorney General” means the Attorney General of the Seminole Nation of Oklahoma unless indicated otherwise.

(b) “Child” means and includes every natural person less than eighteen (18) years of age not declared emancipated from his parent or guardian by order of a Court of competent jurisdiction.

(c) “Detention Facility” means any jail operated by the Nation, another Indian Tribe, the Bureau of Indian Affairs, or the State of Oklahoma or any political subdivision thereof that is utilized by the Nation to house prisoners on a temporary or long-term basis.

(d) “General Council” means the General Council of the Seminole Nation of Oklahoma.

(e) “Incompetent person” means and includes every natural person who has been legally declared incompetent by a Court of competent jurisdiction by reason of birth defect, mental illness, mental handicap, dementia, diminished capacity, habitual or addictive abuse of alcohol or other drugs, or other cause as provided by law.

(f) “Nation” means the Seminole Nation of Oklahoma and all Indian Country, as defined in 18 U.S.C. § 1151, subject to the Nation’s jurisdiction.

(g) “Principal Chief” shall mean the Principal Chief of the Seminole Nation of Oklahoma, unless a different meaning is attributed to this term in an agreement with another Indian Tribe which provides for the operation of an Intertribal Court.

(h) “Other Indian Tribe” shall mean any Federally recognized Indian Tribe other than the Seminole Nation.

(i) “Real property” or “non-trust interest in real property” shall mean any interest in real property within the Nation other than the Indian trust title held by the United States for the use of any Indian or Indian Tribe, or the fee title to any land held by any Indian or Indian Tribe which is subject to a restriction upon alienation imposed by the United States. Nothing in this Title shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.

(j) “Reservation” means the last recognized reservation boundaries of the Nation irrespective of whether they have been disestablished.

(k) “Supreme Court” means the Supreme Court of the Seminole Nation of Oklahoma unless otherwise indicated.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 8. Declaratory Judgment**

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money judgment or equitable relief is not requested or not due. In particular, the Court may issue its declaratory judgment recognizing common law marriages and divorces, and provide for the custody of children and division of property in such divorces.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 9. Effect of Previous Court Decisions**

All previous decisions of the Courts of the Nation, insofar as they are not inconsistent with this Title, shall continue to have precedential value in the District Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 10. C.F.R. Not Applicable**

Any and all provisions of Part 11 of Title 25 of the Code of Federal Regulations as presently or hereafter constituted are declared to be not applicable to the Nation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 11. Laws Applicable to Civil Actions**

(a) In all civil cases, the District Court shall apply:

- (1) The Constitution, statutes, and common law of the Nation not prohibited by applicable Federal law, and, if none, then
- (2) Applicable federal law, including federal common law, and, if none, then
- (3) The laws of any state or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Nation.

(b) No federal or state law shall be applied to a civil action pursuant to paragraphs (2) and (3) of subsection (a) of this Section if such law is inconsistent with the laws of the Nation or the public policy of the Nation.

(c) Where any doubt arises as to the customs and usages of the Nation, the Court, either on its own motion or the motion of any party, may subpoena and request the advice of elders and councilors familiar with those customs and usages.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 12. Publication Notices**

All notices required or authorized to be published under this Title shall be published in a newspaper authorized by law to publish legal notices within or adjacent to the Nation pursuant to Section 803 of Title 5.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 13. Agencies, Boards and Commissions**

All references in this Title to agencies, boards, commissions and/or committees shall mean agencies, boards, commissions and/or committees operating under the auspices of the Nation unless otherwise indicated.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**CHAPTER ONE**  
**COMMENCEMENT OF ACTION**  
**PLEADINGS, MOTIONS AND ORDERS**

**Section 101. Commencement of Action**

A civil action is commenced by filing a complaint with the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 102. One Form of Action**

There shall be one form of action to be known as a “civil action.”

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 103. Claim Defined**

As used in this Title, the term “claim” means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 104. Notice of Pendency of Action**

Upon the filing of a complaint in the District Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the plaintiff’s title, except as provided in Sections 105 and 106 of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 105. Notice of Pendency Contingent upon Service**

Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant within one hundred twenty (120) days after the filing of the petition.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 106. Special Notice for Actions Pending in Other Courts**

No action pending in either state or federal court, or the court of any other Indian Tribe, shall constitute notice with respect to any real property or personal property located within the Nation

until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected, or the description of the personal property affected by the action and its location (if known), is filed of record in the office of the Clerk of the District Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 107. Pleadings Allowed: Form of Motions**

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Section 117; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

- (1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:
  - (A) be made in writing;
  - (B) state with particularity the grounds therefore; and
  - (C) set forth the relief or order sought.
- (2) The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
- (3) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.
- (4) All motions shall be signed in accordance with Section 111 of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 108. General Rules of Pleading**

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain

- (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and

- (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. A party may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in Section 111 of this Title. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;
- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;
- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;

- (17) Statute of frauds;
- (18) Statute of limitations;
- (19) Waiver;
- (20) Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

- (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.
- (2) A party may set forth and at trial rely upon two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligation set forth in Section 111 of this Title.

(f) Construction of Pleadings. All pleadings shall be liberally construed so as to do substantial justice.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 109. Pleading Special Matters**

(a) Capacity. It is not necessary to aver or assert the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.



(b) Fraud, Mistake, Conditions of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all condition precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 110. Form of Pleadings, Motions, and Briefs**

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the names of the Court, the title of the action, the file number, and a designation of the type of pleading in the terms expressed in Section 107(a). In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. In the initial third-party complaint, counterclaim, crossclaim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable may be referred to by number in all succeeding pleadings, or motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in

any motion or brief. A copy of any written instrument which is an exhibit to a pleading, or a motion, or a brief is a party thereof for all purposes.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 111. Signing of Pleadings**

Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney or advocate shall sign his pleading and state his address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The English and American common law rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is not applicable in the District Court. The signature of an attorney or advocate constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section an attorney or advocate may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 112. Defenses and Objections – When and How Presented – By Pleading or Motion – Motion for Judgment on the Pleadings**

(a) When Presented.

- (1) A defendant shall serve his answer within twenty (20) days after the service of the summons and complaint upon him, except when service is made under any one of Sections 216, 218, or 221 of this Title and a different time is prescribed in the order of the court, or under the statute of the Nation.
  - (A) A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs.
  - (B) The Nation or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim,

within sixty (60) days after the service upon the Nation. No default judgment shall be entered against the Nation, and upon affidavit of the Principal Chief that the Nation has no attorney but that an attorney contract is pending, the Court shall allow the Nation to answer within thirty (30) days after approval of the attorney contract or within sixty (60) days after service, whichever is later.

(C) The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the court:

- (i) If the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action.
- (ii) If the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

(2) Within the time in which an answer may be served, a defendant may file an entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. An entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (b) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense numbered 9 of paragraph (b) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties capacity to be sued. The defense of sovereign immunity may be raised at any time during the proceedings.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue or forum non conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process
- (6) Failure to state a claim upon which relief can be granted;

- (7) Failure to join a party under Section 303;
- (8) Another action pending between the same parties for the same claim;
- (9) Lack of capacity of a party to be sued; and
- (10) Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 905, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 905. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 905, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Section 905. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(10) in subdivision (b) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Section shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before filing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just. Such motions are not favored.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Title, upon motion made by a party, within twenty (20) days after the service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient

defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by the rules relating to summary judgment.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) of this Section on any of the grounds there stated. The Court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

(h) Waiver or Preservation of Certain Defenses.

- (1) A defense of lack of jurisdiction over the person, improper venue or forum non conveniens, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived
  - (A) if omitted from a motion in the circumstances described in subdivision (g) of this Section, or
  - (B) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 118(a) to be made as a matter of course, or
  - (C) if a permissive counterclaim is filed pursuant to Section 114(b).
- (2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Section 303, and an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any pleading permitted or ordered under Section 107(a), or by motion for judgment on the pleadings, or at the trial on the merits.
- (3) Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 113. Final Dismissal on Failure to Amend**

On granting a motion to dismiss a claim for relief, the Court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed which should normally be ten (10) days absent good cause for a shorter or longer time. If

the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the Court for filing an amended pleading. Within the time allowed by the Court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 114. Counterclaim and Cross-Claim**

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if

- (1) at the time the action was commenced the claim was the subject of another pending action, or
- (2) the opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may otherwise have which are otherwise properly raised.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount, or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim against the Nation. This Title shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Nation or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Nation or an officer or an agency thereof. A permissive counterclaim asserted by the Nation waives the defense of sovereign immunity for the sole purpose of determining the permissive counterclaim stated by the Nation, its officer, or agency, but does not waive such defense for any other purpose.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may be leave of Court set up the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for amendment without leave of the Court by Section 118(a) of this Title, he may set up such counterclaim by amendment without leave of the Court.

(g) Cross-claim Against Co-party. A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or crossclaim in accordance with the provisions of Sections 303 and 304.

(i) Separate Trials; Separate Judgments. If the Court orders separate trials as provided in Section 706(b), judgment on a counterclaim, cross-claim, or third party claim may be rendered in accordance with the terms of Section 910(b) when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 115. Counterclaim: Effect of the Statutes of Limitation**

(a) Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.

(b) Where a counterclaim and the claim of the opposing party:

- (1) Do not arise out of the same transaction or occurrence; and
- (2) Both claims are for money judgments; and
- (3) Both claims had occurred before either was barred by a statute of limitation; and
- (4) The counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.

(c) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 116. Counterclaims Against Assigned Claims**

A party, other than a holder in due course, who acquired a claim by assignment or otherwise, takes the claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 117. Third-Party Practice**

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him or who is or may be liable to him on a claim arising out of the transaction or occurrence that is the subject matter of any one or more of the claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than ten (10) days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Section 112 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Section 114. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claims against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Section 112 and his counterclaims and cross-claims as provided in Section 114. A third-party defendant may proceed under this Section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. Any party may move to strike the third-party claim, or for its severance or separate trial.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this Section would entitle a defendant to do so.

(c) Party Defendants in Real Property Actions. In an action involving real property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following



words, “said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff and defendant has no right, title, lien, estate, encumbrance, claim, assessment, or interest, either in law or in equity, in and to the real property involved herein,” that same is sufficient to include any and all claims known or unknown, that such defendant may have in and to the real property involved in such case, it not being necessary to set out the reason for such claim or claims in the complaint or other pleading for such person being made a party defendant.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 118. Amended and Supplemental Pleadings**

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleading, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and it is sufficient to amend the order and the pleadings need not be amended.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment

- (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and
- (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

In cases where the Nation, or an agency or officer thereof, has previously been named as a party and has filed a responsive pleading or otherwise appeared in the case, the delivery or mailing of process to the Attorney General, or an agency or officer thereof who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) thereof with respect to the Nation or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings. Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or event which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 119. Pre-Trial Procedure: Formulating Issues**

(a) In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

(b) The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court in its

discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-injury actions or extend it to all actions.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 120. Lost Pleadings**

If a pleading be lost or withheld by any person, the Court may allow a copy thereof to be substituted.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 121. Tenders of Money or Property**

When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in Court when the pleading is filed, but it shall be sufficient if the money or property is deposited in Court at trial, or when ordered by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 122. Dismissal of Actions**

- (a) Voluntary Dismissal: Effect Thereof.
  - (l) By Plaintiff: By Stipulation. Subject to the provisions of Section 307 or Section 802 or any statute of the Nation, an action may be dismissed by the plaintiff without order of Court
    - (A) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion of summary judgment, whichever first occurs, or
    - (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendant operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendant, in any court of any other Indian Tribe, the United States, or any state an action based on or including the same claim, unless such previous dismissal was entered due to inability to obtain

personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the District Court, upon notice to all adverse parties for an order determining that the previous dismissal was within one or both of the two stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The Court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

- (2) By Order of the court. Except as provided in paragraph (1) of this subdivision of this Section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with this Title, any court rule, or any order of the court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the fact and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Section 751(a). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Section, other than a dismissal for lack of jurisdiction, or for failure to join a party under Section 303, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER TWO**

### **PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS**

#### **Section 201. Issuance of Summons**

Upon the filing of the complaint the Court Clerk shall forthwith issue a summons and deliver it for service with a copy of the complaint to the plaintiff's attorney, Chief of the Seminole Nation Lighthorse Police Department, or to a person specially appointed by Court to serve it. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 202. Form of Summons**

The summons shall be signed by the Court Clerk, be under the seal of the Court, contain the name of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which this Title requires the defendant to appear and defend, and shall notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. When, under Section 219, service is made pursuant to a statute or rule of the court, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the ordinance or rule of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 203. Who May Serve Process Personally**

(a) Process including a subpoena, if served in person, shall be served by the Chief of the Seminole Nation Lighthorse Police Department or his deputy, or the Bureau of Indian Affairs Police, or their deputy, a person licensed to make service of process in civil cases pursuant to Court rule, or a person specially appointed by the Court for that purpose. A subpoena may also be served by any person over eighteen (18) years of age who is not a party to the action.

(b) When process has been served and return thereof is filed in the office of the Court Clerk, a copy of the return shall be sent by the Court Clerk to the serving party's attorney within three (3) days after the return is filed.

(c) Process, other than a subpoena, shall not be served by a party's attorney except as provided in Section 204 of this Chapter. A party shall not make service of process unless appearing without an attorney, in which case, the party may make service of process in the same manner and to the same extent that an attorney for the party could have served that process under this Chapter.

(d) The Court shall freely make special appointments to serve all process under this paragraph.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 204. Service of Process by Mail**

(a) A summons and petition, and a subpoena, may be served by mail by the plaintiff's attorney, or any person authorized to serve process pursuant to Section 203 of this Chapter.

(b) Service by mail may be accomplished by mailing the subpoena, or a copy of the summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.

(c) Service pursuant to this Section shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default or judgment by default, the person serving the process shall mail to the defendant by first-class mail postage prepaid a copy of the summons and petition and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. A copy of said notice and proof of mailing thereof shall be filed of record in the case prior to the entry of a judgment by default. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the Court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

(d) In the case of an entity described in subsection (c) of Section 217 of this Title, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

(e) In the case of governmental organization subject to suit, acceptance or refusal by an employee of the office of the officials specified in the appropriate subsection of Section 217 of this Title who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 205. Service by Publication**

Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or

his attorney filed with the Court that with due diligence service cannot be made upon the defendant by any other method.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 206. Publication Service Upon Parties and the Unknown Successors of Named Parties**

(a) Service of summons upon named parties, the unknown successors of a named party, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in the complaint, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the complaint or the affiant does not know, and with due diligence cannot ascertain, the following:

- (1) Whether a person named as a party is living or dead, and, if dead, the names or whereabouts of his successors, if any.
- (2) The names or whereabouts of a party and the unknown successors, if any, of the named decedent or other parties.
- (3) Whether a partnership, corporation, or other association named as a party continues to have legal existence or not; or the name or whereabouts of its officers or successors.
- (4) Whether any person designated in a record as a trustee continues to be the trustee, or the names or whereabouts of the successors of the trustee, or
- (5) The names or whereabouts of the owners or holder of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills of similar instruments.

(b) Service pursuant to this Section shall be made by publication of a notice, signed by the Court Clerk, in a newspaper authorized by law to publish legal notices within or adjacent to the Nation pursuant to Section 703 of Title 5 (Courts).

(c) All named parties, their unknown successors, and other persons who may be served by publication may be included in one notice. The notice shall state:

- (1) The name of the Court in which the petition is filed,
- (2) The names of the parties,
- (3) The parties whose unknown successors are being served, if any,
- (4) That the named parties and their unknown successors have been sued and must answer the complaint or other pleading on or before a time to be

stated (which shall not be less than thirty-one (31) days from the date of the publication) or judgment will be rendered accordingly. The notice shall specify what judgment or other action may be taken if the parties fail to appear and answer.

- (5) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

- (d) If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

- (e) Service is complete upon publication.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 207. Publication Notice for Recovery of Money**

When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 208. Publication Notice in Quiet Title Actions**

In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state the a decree quieting plaintiffs title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer. In quiet title actions notice shall be published twice. The second publication shall be not less than seven (7) nor more than forty-five (45) days after the first publication. The answer shall be due thirty-one (31) days alter the second publication, and service is complete upon the second publication.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 209. Completion of Publication Service**

Service of publication is complete when made in the manner and for the time prescribed in this Chapter. Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice attached. No default judgment may be



entered on such service until proof of service by publication is filed with and approved by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 210. Entry of Default on Party Served by Publication**

Before entry of a default judgment or order against a party who has been served solely by publication under this Chapter, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this subsection. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or association, the Court shall conduct an inquiry to ascertain whether the requirements described in subsection (a) of Section 206 of this Title have been satisfied.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 211. Vacating Default Judgments Where Service is by Publication**

(a) A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the date of the judgment or order, have the judgment or order opened and be let in to defend.

(b) Before the judgment or order is opened, the applicant shall notify the adverse party of his intention to make such challenge, and shall

- (1) File a full answer to that petition,
- (2) Pay all costs if the Court requires them to be paid, and,
- (3) Satisfy the Court by affidavit or other evidence that during the pendency of the action he had no actual notice thereof in time to appear in Court and make his defense.

(c) The title to any property which is the subject of and which passed to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under the Section. Nor shall proceedings under this Section affect the title of any property sold before judgment under an attachment.

(d) The adverse party, on the hearing of any application to open a judgment or order as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time appear in Court and make his defense.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 212. Certain Technical Errors Not Grounds for Vacating Judgment**

(a) No judgment heretofore or hereafter rendered in any action against unknown heirs or devisees of a deceased person shall ever be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff to the effect that the name of such heirs or devisees, or any of them, and their residences, are unknown to the plaintiff, was not annexed to his complaint so long as said affidavit is on file in the action, and all such judgments, if not otherwise void, are hereby declared to be valid and binding from the date of rendition.

(b) No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication on file in the action was made by the attorney for the plaintiff or because the complaint or other pleading was verified, if verification is necessary, by the attorney for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such attorney were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff.

(c) All such judgments, if not otherwise defective or void, are hereby declared valid and legally effective and conclusive as of the date thereof as if such affidavit was made or the complaint or pleading was verified by the plaintiff or other party obtaining such service by publication.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 213. Meaning of Successors for Publication Purposes**

The term “successors” includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 214. Minimum Contacts Required for Effective Long Arm Service**

Service outside of the Nation does not give the Court in personam jurisdiction over a defendant who is not subject to the jurisdiction of the Courts of this Nation, or who has not, either in person or through an agent, submitted himself to the jurisdiction of the Court, of this Nation either by appearance, written consent, actions, or having voluntarily entered into sufficient contacts with the Nation, its members, or its territory to justify Nation over him in accordance with the principals of due process of law and federal Indian law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 215. Consent is Effective Substitute for Service**

An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 216. Service Pursuant to Court Order**

If service cannot be made by personal delivery or by mail, a defendant of any class referred to in subsection (a) or (c) of Section 217 of this Chapter may be served as provided by Court order in any manner which is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 217. Manner of Making Personal Service**

The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such certified copies as are necessary. If the complaint is not served with the summons, the case shall not be dismissed but the time to answer should be extended by the Court upon motion. The person serving the summons shall state on the copy that is left with the party served the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with the prejudices the party served, the Court may extend the time to answer. Service of the summons and complaint and service of subpoenas shall be made as follows:

(a) Upon an individual other than a child or an incompetent person, by delivering a copy of the summons and a copy of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person fifteen (15) years of age or older then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(b) Upon a child, by delivering a copy of the summons and complaint to either parent and the legal guardian of the child, if any, or the person with whom the child resides if the child is under the age of fourteen (14) years. If the child is over the age of fourteen (14) years, by serving either parent and the legal guardian of the child, if any, or the person with whom he resides and by serving the child personally if the legal guardian cannot be located.

(c) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the

defendant. Service may also be had upon such entities by delivering the summons and complaint to a place of business of such entity and leaving a copy with the person in charge of that place of business at the time service is made.

(d) Upon the United States, by delivering a copy of the summons and of the complaint to the United States Attorney for the Western District of Oklahoma or to an assistant United States Attorney or clerical employee designated by the United States Attorney in a writing filed with the Clerk of the United States District Court for the Western District of Oklahoma and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(e) Upon any office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in subsection (c) of this Section.

(f) Upon a state, a state municipal corporation, any other Indian Tribe not a party to this Title, or other governmental organization thereof subject to suit, by delivering copy of the summons and of the complaint to the Chief Executive Officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state or Indian Tribe for the service of summons or other like process upon any such defendant.

(g) Upon the Nation by delivering by personal service or certified mail, return receipt requested, a copy of the summons and complaint to the following required parties:

- (1) the Principal Chief of the Nation, or to such officer or employee as may be designated by the Principal Chief of the Nation in a writing filed with the Clerk of the District Court; and
- (2) the Attorney General.

Further, in any action attacking the validity of an order of an officer or agency not made a party, the Plaintiff must also deliver a copy of the summons and complaint by registered or certified mail, return receipt request, to such officer or agency. Service on the Nation shall be considered complete and effective on the date the last Required Party is served as required by this subsection. In no event shall the Nation be served by publication.

(h) Upon any officer or agency by serving the Nation as described in subsection (g) of this Section, and by delivering a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subsection (c) of this Section.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 218. Effect of Service of Some of Several Defendants**

(a) Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

- (1) If the action be against defendants jointly indebted upon contract, tort, or any other cause of action, the plaintiff may proceed against the defendants served, unless the Court otherwise orders; and if the plaintiff recovers judgment, it may be entered against:
  - (A) all the defendants thus jointly indebted only insofar as the judgment may be enforced against the joint property of all, and
  - (B) against the defendants served insofar as the judgment may be enforced against the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.
- (2) If the action be against defendants who are severally liable, the plaintiff may, without prejudice to his rights against those not served, proceed against the defendant(s) served in the same manner as if they were the only defendants.

(b) A judgment against one or more defendants served, whether jointly or severally liable, shall not be construed to make such judgment a bar to another action against those not served.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 217.1 to 218 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 219. Service Upon Party Not Found Within the Nation**

(a) Whenever an ordinance of the Nation or an order of the District Court or the Supreme Court provides for service of summons, or of a notice, or of an order in lieu of summons upon a party who does not reside within the Nation or is not otherwise found within the geographical boundaries of the Nation, service may be made under the circumstances and in the manner prescribed by the ordinance or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this Title.

(b) In any action against a foreign corporation or association where service is authorized by Tribal law upon a Tribal Officer, and the party seeking service elects to serve the Tribal Officer, service shall be made as follows:

- (1) The District Court Clerk shall issue a summons and shall forthwith mail or personally triplicate copies of said summons, together with a copy of the complaint and the service fee to the Tribal officer. The Court Clerk shall make due return, indicating that the summons and complaint copies have

been delivered to the Tribal Officer and the date of such delivery. Receipt of the summons and complaint by the Tribal Officer shall constitute service upon him. Within three (3) working days after service upon him, the Tribal Officer shall send copies of the summons and complaint to such foreign corporation or association, by registered or certified mail, return receipt requested, at its office as shown by the articles of incorporation, or charter, or by the latest information officially filed in the office of the Tribal Officer. The summons shall set forth the last-known address of the office of the corporation or association as ascertained by the parties by use of due diligence, and the Tribal Officer shall mail copies of the summons and complaint to the corporation or association at this address. The Tribal Officer shall maintain one copy of the summons and complaint with the records of the corporation or association.

- (2) The original summons that is served on the Tribal Officer shall be in form and substance the same as provided in suits against residents of the Nation. The summons shall state an answer date which shall be not less than forty-five (45) days nor more than sixty (60) days from the date that such summons was issued.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 218 to 219 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 220. Territorial Limits of Effective Service**

(a) All process, other than subpoena or process involving the detention, seizure, or arrest of person or property, may be served anywhere within the Nation and, when authorized by an ordinance of the Nation or by this Title, beyond these territorial limits.

(b) In addition, persons who are brought in as parties pursuant to Section 117 of this Title, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Section 303, may be served in the manner stated in subsections (a)-(f) of Section 217 of this Title at all places outside the Nation but within the United States, and persons required to respond to an order of commitment for civil contempt may be served, but not arrested, at the same places.

(c) A subpoena or process involving the detention, seizure, or arrest of persons or property, may be served and compulsorily enforced only within the Indian Country, as defined by 18 U.S.C. 1151, which is subject to the jurisdiction of the Nation. A subpoena or other process involving the detention, seizure or arrest of a person or property may be served anywhere within the United States, but no compulsory enforcement thereof may be maintained in this Court unless such person or property is located within the Indian Country of the Nation when service is made.

(d) When the exercise of jurisdiction is authorized by a law of the Nation or Federal law, service of the summons and complaint may be made outside the Nation:

- (1) By personal delivery in the manner prescribed for service within the Nation,
- (2) In the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its Courts of general jurisdiction,
- (3) By publication in appropriate circumstances,
- (4) As directed by the foreign authority in response to a letter rogatory, or
- (5) As directed by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 219 to 220 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 221. Return of Service of Process**

(a) The person serving the process shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than the Chief of the Seminole Nation Lighthorse Police Department or his deputy, the Bureau of Indian Affairs Police or a deputy thereof, or an attorney by mail, he shall make affidavit thereof. Return of receipt for certified or registered mail shall be attached to the proof of service if service was made by mail. A copy of each publication of notice shall be attached to the return of service by publication. Failure to make proof of service does not affect the validity of the service.

(b) The person serving the summons shall state on the copy that is left with the party served, as well as on the return, the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 220 to 221 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 222. Alternative Provisions for Service in a Foreign Country**

(a) Manner. When the law of the Nation referred to in Section 219 of this Title authorizes service upon a party not an inhabitant of or found within the territorial limits of effective service of the District Court, and when service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made:

- (1) in the manner prescribed by the law of the Nation, state, or foreign country for service in that Indian Tribe, state, or country in an action in any of its Courts of general jurisdiction; or

- (2) as directed by the foreign authority in response to a letter rogatory when service in either case is reasonably calculated to give actual notice; or
- (3) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or
- (4) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the Clerk of the Court to the party to be served; or
- (5) as directed by the order of the Court. Service under (3) or (5) above may be made by any person who is not a party and is not less than eighteen (18) years of age or who is designated by order of the District Court or by the foreign Court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign Court or officer who will make the service.

(b) Return. Proof of service may be made as prescribed by Section 221 of this Title, or by the law of the Indian Tribe, state, or foreign country, or by order of the Court. When service is made by mail pursuant to subsection (a) of this Section, proof of service shall include a receipt signed by the addressee or other evidence of the delivery to the address satisfactory to the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 221 to 222 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 223. Subpoena**

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the Clerk under the seal of the Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Clerk shall issue a subpoena, or a subpoena for the production of documentary or other physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may

- (1) quash or modify the subpoena if it is unreasonable and oppressive, or
- (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.



(c) Service. A subpoena may be served by the Chief of the Seminole Nation Lighthorse Police, by his deputy, the Police of the Bureau of Indian Affairs, or by any other person authorized by the Court or by this Title who is not a party and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Nation or an officer or agency thereof, fees and mileage need not be tendered, but fees paid shall be charged to such officer's or agency's budget. A subpoena may be served as provided in Section 204 if accepted by the addressee. All subpoena service expenses may be recovered as other costs.

(d) Subpoena for Taking Depositions; Place of Examination.

- (1) Proof of service of a notice to take a deposition as provided in Sections 405(b) and 406(a) or presentation of prepared notices to be attached to the subpoena constitutes a sufficient authorization for the issuance by the clerk of the District Court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matter within the scope of the examination permitted by Section 401(b), but in that event the subpoena will be subject to the provisions of Section 401(c) and subdivision (b) of this Section.
- (2) The person to whom the subpoena is directed may object to the inspection or copying of any or all of the designated materials. Such objection must in writing and must be served within ten (10) days after the service of the subpoena, or on or before the time specified in the subpoena for compliance, if such time is less than ten (10) days after service, upon the attorney designated in the subpoena. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.
- (3) A resident of the Nation may be required to attend an examination at any place within the Nation not more than fifty (50) miles from his residence, except that he may be required to attend in the county wherein he resides or is employed or transacts his business in person, or in the town in which the District Court is located, or at such other convenient place as is fixed by an order of the Court. A nonresident of the Nation may be required to attend only in the county wherein he is served with a subpoena or resides or within 50 miles from the place of service, or at such other convenient place as is fixed by an order of the Court.

(e) Subpoena for Hearing on Trial.

- (1) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the Clerk of the District Court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Nation, or any place without the Nation that is within one hundred (100) miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the Nation provides therefore, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place.
- (2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as may be provided by Statute.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him within the Nation may be deemed a contempt of the District Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 222 to 223 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 224. Summons, Time Limit for Service**

(a) If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the complaint and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Court's own initiative with notice to the plaintiff or upon motion.

(b) If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the complaint, the action shall be deemed to have been dismissed without prejudice as to that defendant. This Section shall not apply to service in a foreign country.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 230 to 224 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 225. Service and Filing of Pleadings and Other Papers**

(a) Service: When Required.

- (1) Except as otherwise provided in this Title, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in

default for failure to appear except any pleading asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

- (2) In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure, and upon any person then known to claim an ownership interest in the property.

(b) Service: How Made. Whenever service is required or permitted to be made upon a party represented by an attorney (including any person licensed to practice law before the District Court) the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the Clerk of the Court who shall mail a copy thereof to the party's last address of record. Delivery of a copy within this Section means: handing it to the attorney or to the party; or leaving it at his office with his Clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person fifteen (15) years of age or older then residing therein. Service by mail is complete upon mailing.

(c) Service: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter. Discovery materials need not be filed except by order of the Court, for use in the proceedings, or to enforce or resist such discovery.

(e) Filing with the Court defined. The filing of pleadings and other papers with the Court as required by this Chapter shall be made by filing them with the Clerk of the Court except that the Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the Clerk.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 231 to 225 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 226. Computation and Enlargement of Time**

(a) **Computation.** In computing any period of time prescribed or allowed by this Title, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to eleven (11) days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the clerk of the court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, “legal holiday” includes New Year’s Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the General Council.

(b) **Enlargement.** When by this Title or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the Court for cause shown any at any time in its discretion may

- (1) with or without motion or notice order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or
- (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Sections 757(b), 752(c), (d) and (e), and Section 909(b), except to the extent and under the conditions stated in them.

(c) **For Motions-Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by this Title or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Section 908(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

(d) **Additional Time after Service by Mail.** Whenever a party has the right or is required to do some actor take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

226 [HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 240 to on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 227. General Cases in Which Extraterritorial Service Authorized**

Service of summons and complaint, third party complaints, and other process by which an action is instigated may be made outside the territorial limits described in Section 220 in the following cases in addition to any circumstances specifically or otherwise provided for:

- (a) In all actions arising under Title 19 or the Indian Child Welfare Act;
- (b) In all divorce actions when one of the parties is a resident of the Nation or a member of the Nation;
- (c) In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the Nation; or
- (d) In all actions arising out of the negligent operation of an automobile within the Nation by a non-resident, when an injury to person or property resulted within the Nation from the negligent operation of the motor vehicle.

227 [HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 241 to on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE**

### **PARTIES**

#### **Section 301. Parties Plaintiff and Defendant: Capacity**

(a) Real Party in Interest.

- (1) Every action shall be prosecuted in the name of the real party interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Nation so provides, an action for the use or benefit of another shall be brought in the name of the Nation.
- (2) No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the Courts of the Nation, and service may be had upon incorporated associations and partnership as provided in Section 217(c) of this Title, upon a managing or general partner, or upon an officer of an unincorporated association.

(c) Children or Incompetent Persons. Whenever a child or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the child or incompetent person. If a child or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for a child or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the child or incompetent person.

(d) Assignment of Tort Claims. Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this subsection shall not preclude subrogation of the proceeds of such tort claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 302. Joinder of Claims, Remedies, and Actions**

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable as he may have against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

(c) Joinder of Actions by the Court. Whenever it appears to the Court that separate actions are pending between the same parties, or involving the same facts or law, the Court may, if the parties will not be prejudiced thereby, order said actions joined for all, or a portion of, the further proceedings.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 303. Joinder of Persons Needed for Just Adjudication**

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

- (1) In his absence complete relief cannot be accorded among those already parties, or
- (2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
  - (A) as a practical matter impair or impede his ability to protect that interest or
  - (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he has not been so joined, the Court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be

dismissed, the absent person being thus regarded as indispensable. The facts to be considered by the Court in making such determination include:

- (1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;
- (2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
- (3) Third, whether a judgment rendered in the person's absence will be adequate; and
- (4) Whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

(c) **Pleading Reasons for Non-Joinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any person as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This Section is subject to the provisions of Section 307.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 304. Permissive Joinder of Parties**

(a) **Permissive Joinder.**

- (1) All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question or fact common to all these persons will arise in the action, or if the claims are connected with the subject matter of the action.
- (2) All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question of law or fact common to all defendants will arise in the action, or if the claims are connected with the subject matter of the action.
- (3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendant according to their respective liabilities.



(b) In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence.

(c) Separate Trials. The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim, or who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 305. Misjoinder and Non-joinder of Parties**

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Leave of the Court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings without leave of the Court specified in Section 115(a). Any claim against a party may be severed and proceeded with separately upon order of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 306. Interpleader**

(a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the title on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Section supplement and do not in any way limit the joinder of parties permitted in Section 304.

(b) The provisions of this section shall be applicable to actions brought against a Lighthorse Police Officer or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in any such action shall be entitled to the benefit of this section against the party in whose favor the execution issued.

(c) The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the Court, in such amount and with such surety as the Court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of

interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court, the Court should discharge him from the action and from liability as to the claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fee.

(d) In cases of interpleader, costs may be adjudged for or against any party, except as provided in subsection (c) of this Section.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 307. Class Actions**

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

- (1) The class is so numerous that joinder of all members is impracticable,
- (2) There are questions of law or fact common to the class,
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) The representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subsection (a) are satisfied, and in addition:

- (1) The prosecution of separate actions by or against individual members of the class would create a risk of:
  - (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
  - (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
- (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
- (3) The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual

members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

- (1) As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.
- (2) In any class action maintained under subdivision (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual members who can be identified through reasonable effort. The notice shall advise each member that
  - (A) the Court will exclude him from the class if he so requests by a specified date;
  - (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and
  - (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.
- (3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.
- (4) When appropriate

- (A) an action may be brought or maintained as a class action with respect to particular issues, or
  - (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall then be construed and applied accordingly.
- (5) Where the class contains more than five hundred (500) members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) members, but the members to whom individual notice is not directed shall be given notice in such manner as the Court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at any time before the issue of liability is determined and commencing an individual action before the issue of liability is determined shall be the equivalent of requesting exclusion from the class.

(d) Orders in Conduct of Actions. In the conduct of actions to which this Section applies, the Court may make appropriate orders:

- (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
- (2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;
- (3) Imposing conditions on the representative parties or on intervenors;
- (4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;
- (5) Dealing with similar procedural matters.

The orders may be combined with an order under Section 119, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 308. Derivative Actions by Shareholders and Members**

(a) In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

- (1) That the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation by law, and
- (2) That the action is not a collusive one to confer jurisdiction on a Court of the Nation which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort.

(b) The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs. The Court shall not take jurisdiction over such actions concerning the internal affairs of corporations or other entities formally organized under the law of some other jurisdiction absent the consent of all parties to the controversy or some compelling reason to assume such jurisdiction.

(c) An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action, the Court may make appropriate orders corresponding with those described in Section 307(d) and the procedure for dismissal or compromise of the action shall correspond with that provided in Section 307.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 309. Intervention**

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:

- (1) when a statute of the Nation confers an unconditional right to intervene; or
- (2) when the applicant claims an interest relating the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a Tribal, federal, or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 225. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the Court.

(d) Intervention by the Nation. In any action, suit, or proceedings to which the Nation or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Nation affecting the public interest is drawn into question, the parties, and upon their failure to do so, the Court, shall certify such fact to the Principal Chief, the Attorney General and General Council, and the Court shall permit the Nation to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability. The Nation shall, subject to the applicable provisions of law, have all the rights of a party, and be subject to the liability of a party – as to court costs only – to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality or enforceability of the laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the Court either orally upon the record in open Court or by a separate written notice filed with the Court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Nation as provided above.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 310. Substitution of Parties**

- (a) Death.
  - (1) If a party dies, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of the

hearing, shall be served on the parties as provided in Section 225 and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the Nation. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

- (2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.
- (3) Actions for libel, slander, and malicious prosecution shall abate at the death of the defendant.
- (4) Other actions, including actions for wrongful death shall survive the death of a party

(b) **Incompetency.** If a party becomes incompetent, the Court, upon motion served as provided in subsection (a) of this Section may allow the action to be continued by or against his representative.

(c) **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a) of this Section.

(d) **Public Officers; Death or Separation from Office.**

- (1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an offer shall not affect the substitution.
- (2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name but the Court may require his name to be added.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER FOUR**

### **DEPOSITIONS AND DISCOVERY**

#### **Section 401. General Provisions Governing Discovery**

(a) **Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral or written examination; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Court orders otherwise under subsection (c) of this Section, the frequency of use of these methods is not limited. Discovery may be obtained as provided herein in aid of execution upon a judgment.

(b) **Scope of Discovery.** Unless otherwise limited by order of the Court in accordance with this Chapter, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreements under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at that. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.
- (3) Trial preparation materials. Subject to the provisions of subdivision (b)(4) of this Section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions,



conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

- (4) Trial preparation: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Section and acquired or developed in anticipation of litigation or for trial may be obtained only as follows:
  - (A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this section, concerning fees and expenses as the Court may deem appropriate.
  - (B) A party may discover the facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Section 410(b) or upon a showing of exception circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.
  - (C) Unless manifest injustice would result,
    - (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this Section; and

- (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this Section the Court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Section the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause, shown, the Court or alternatively, on matters relating to deposition, the court in the jurisdiction where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time, or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the Court;
- (6) that a deposition after being sealed be opened only by order of the Court;
- (7) that a trade secret or other confidential research development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

- (1) A party is under as duty seasonably to supplement his response with respect to any question directly addressed to
  - (A) the identity and location of persons having knowledge of discoverable matters, and
  - (B) the identity of each person expected to be called as an expert witness at trial the subject matter on which he is expected to testify, and the substance of his testimony.
- (2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which
  - (A) he knows that the response was incorrect when made or
  - (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
- (3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 402. Depositions Before Action or Pending Appeal**

- (a) **Before Action.**
  - (1) **Petition.** A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in court may file a verified petition in the District Court if the Nation is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:
    - (A) that the petitioner expects to be a party to an action cognizable in the District Court but is presently unable to bring it or cause it to be brought,
    - (B) the subject matter of the expected action and his interest therein,
    - (C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it,

- (D) the names or description of the person(s) he expects will be adverse parties and their addresses so far as known, and
- (E) the names and addresses of the person(s) to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the person(s) to be examined named in the petition, for the purpose of perpetuating their testimony.

- (2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served either within or without the Nation in the manner provided in Section 217(d) for service of summons. If personal service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for any person not served in the manner provided in Section 217(d), an attorney or advocate who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a child or incompetent person the provisions of Section 301(c) apply. Any attorney appointed pursuant to this Section shall be compensated as provided by the Court from the Court fund, such compensation to be taxed as costs against the person perpetuating the testimony.
- (3) Order and examination. If the Court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this Chapter; and the Court may make orders of the character provided for by Sections 409 and 410.
- (4) Use of deposition. If a deposition to perpetuate testimony is taken under this Chapter or if, although not so taken, it would be admissible in evidence in the Courts of the jurisdiction in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the District Court, in accordance with the provisions of Section 407(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the District Court or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the District Court. In such case the party who desires to perpetuate the

testimony may make a motion in the District Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show

- (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each;
- (2) the reasons for perpetuating their testimony.

If the Court finds that the perpetuation of the is proper to void a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Sections 409, and 410, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these sections for depositions taken in actions pending in the District Court.

(c) Perpetuation by Action. This Section does not limit the power of a Court to entertain an action to perpetuate testimony.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 403. Persons Before Whom Depositions May Be Taken**

(a) Within the Nation. Within the jurisdiction of the Nation, depositions shall be taken before an Officer authorized to administer oaths by the laws of the Nation, or before a person appointed by the Court in which the action is pending. A person so appointed has power to administer oaths and take testimony. All parties shall be subject to these provisions anywhere within the Nation as defined in this Title.

(b) Outside the Nation. Outside the Nation, depositions may be taken

- (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or
- (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or
- (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (Name of Indian Tribe, State, or Country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not

taken under oath or for any similar departure from the requirements for depositions taken within the Nation under these sections.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties or is a relative or employee of such attorney or counsel or is financially interested in the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 404. Stipulations Regarding Discovery Procedure**

Unless the Court orders otherwise, the parties may by written stipulation

(a) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and

(b) modify the procedures provided by this Chapter for other methods of discovery, except that stipulations extending the time provided in Sections 408, 409, and 411 for responses to discovery may be made only with the approval of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 405. Depositions Upon Oral Examinations**

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and complaint upon any defendant or service made by publication, except that leave is not required

- (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or
- (2) if special notice is given as provided in subdivision (b)(2) of this Section. The attendance of witnesses may be compelled by subpoena as provided in Section 223.

The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non- Stenographic Recording; Production of Documents and Things; Deposition of Organization.

- (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the

deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

- (2) Leave of Court is not required for the taking of a deposition by plaintiff if the notice
  - (A) states that the person to be examined is about to go out of the Nation and/or outside the State of Oklahoma, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and
  - (B) sets forth facts to support the statement.

The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Section 111 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise due diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

- (3) The Court may for cause shown enlarge or shorten the time for taking the deposition.
- (4) The Court may at the motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.
- (5) The notice to a party deponent may be accompanied by a request made in compliance with Section 409 for the production of documents and tangible things at the taking of the deposition. The procedure of Section 409 shall apply to the request.
- (6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall

designate one or more officers, directors, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these sections.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Seminole Nation Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this Section. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress the deponent or party, the District Court or the Court in the jurisdiction where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 401(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the District Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully although signed unless on a motion to suppress under Section 407(d)(4) the Court



holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the District Court or send it by registered or certified mail to the Clerk thereof for filing.

(A) Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party except that

(i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and

(ii) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. The court may, by section, establish the maximum charges which are reasonable for such services.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

- (2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and, if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 406. Depositions Upon Written Questions**

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Section 223. The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes.

A party desiring to take a deposition upon written question shall serve them upon every other party with a notice stating

- (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and
- (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 405(b)(6).

Within thirty (30) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect question upon all other parties. Within ten (10) days after being served with redirect question, a party may serve re-cross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by Section 405(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 407. Use of Depositions in Court Proceedings**

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, thereof, in accordance with any of the following provisions:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
- (2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 405(b)(6) or Section 406(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.
- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds:
  - (A) that the witness is dead; or
  - (B) that the witness is outside the jurisdiction of the Nation, and cannot be served with a subpoena to testify at trial while within the Nation unless it appears that the absence of the, witness was procured by the party offering the deposition; or
  - (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or
  - (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
  - (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court to allow the deposition to be used.
- (4) If only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts, subject to the Rules of Evidence.

Substitution of parties pursuant to Section 310 does not affect the right to use depositions previously taken; and, when an action in any court of any Indian Tribe, the United States, or of any State has been dismissed and another action involving the same subject matter is afterward brought between the same parties, or their representative or successors in interest, in the District Court, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility. Subject to the provisions of Section 403(b) and subdivision (c)(3) of this Section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reasons which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

- (1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.
- (2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
- (3) As to taking of deposition.
  - (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
  - (B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.
  - (C) Objections to the form of written questions submitted under Section are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last questions authorized.
- (4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is

prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Section 405 and 406 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 408. Interrogatories to Parties**

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. In the answers, the full text of the interrogatory shall immediately precede the answer to that interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five (45) days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Section 412(a) with respect to an objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Section 401(b), and the answers may be used to the extent permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later, time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 409. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes**

- (a) Scope. Any party may serve on any other party a request
  - (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts photographs, phone-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy test, or sample any tangible things which constitute or contain matters within the scope of Section 401(b) and which are in the possession, custody or control of the party upon whom the request is served; or
  - (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing testing, or sampling the property or any designated object or operation thereon, within the scope of Section (b).

(b) Procedure. The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request, except that a defendant may serve a response within forty-five (45) days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected too, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 412(a) with respect to any objection to or other failure to respond to the request or any party thereof, or any other failure to permit inspection as requested.

(c) Persons Not Parties. This Section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 410. Physical and Mental Examination of Persons**

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of party, is in controversy, the Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

### **(b) Reporting of Examining Physician.**

- (1) If requested by the party against whom an order is made under Section 410(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report or examination of a person not a party, the party shows that he is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.
- (2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.
- (3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physical in accordance with the provisions of any other Section of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 411. Requests for Admission**

(a) Requests for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 401(b) set forth in the request that relate to statements or opinions of

fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five (45) days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit to deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that matter on which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Section 412(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objection. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Section, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this Section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Section 119 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. An admission made by a party under this Section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]



## **Section 412. Failure to Make Discovery: Sanctions**

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

- (1) Appropriate Court. An application for an order to a party may be made to the District Court, or, on matter relating to a deposition, to the court in the jurisdiction where the deposition is being taken if necessary. An application for an order to a deponent who is not a party may be made to the Court in the jurisdiction where the deposition is being taken.
- (2) Motion. If a deponent fails to answer a question propounded or submitted under Sections 405 or 406, or a corporation or other entity fails to make a designation under Section 405(b)(6) or Section 406(a), or a party fails to answer an interrogatory submitted under Section 408, or if a party, in response to a request for inspection submitted under Section 409 fails, to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Section 401(c).

- (3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.
- (4) Award of Expenses of Motion. If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances made an award of expenses unjust.

If the motion is granted in part and denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in just manner.

(b) Failure to Comply with Order.

- (1) Sanctions by Court in Jurisdiction Where Deposition is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the jurisdiction in which the deposition is being taken, the failure may be considered a contempt of that court. Sanctions imposed in such matters by any foreign court shall be given full faith and credit and promptly enforced by the District Court, subject to the District Courts authority to modify the sanctions imposed as justice may require.
- (2) Sanction by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Section 405(b)(6) or Section 406(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Section or Section 410, the Court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
  - (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
  - (B) An order refusing to allow the disobedient party to support or oppose designated claims or defense, or prohibiting him from introducing designated matters in evidence;
  - (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;
  - (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any order except an order to submit to a physical or mental examination;
  - (E) Where a party has failed to comply with an order under Section 410(a) requiring him to produce another for examination, such orders as are listed in paragraphs (i), (ii), and (iii) of this subdivision, unless the party failing to comply shows that his is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising him or

both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 411, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that

- (1) the request was held objectionable pursuant to Section 411(a),
- (2) the admission sought was of no substantial importance,
- (3) the party failing to admit has reasonable grounds to believe that he might prevail on the matter, or
- (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Section 405(b)(6) or Section 406(a) to testify on behalf of a party fails (1) to appear before the officer who is take his deposition, after being sewed with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Section 408, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Section 409, after proper service of the request, the District Court on motion may make such order in regard to the failure as are just, and among other it may take any action authorized under paragraphs (i), (ii), and (iii) of subdivision (b)(2) of this Section. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the grounds that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Section 401(c).

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER FIVE WITNESSES**

### **Section 501. Issue and Service of Subpoena for Witnesses**

The Court Clerk shall, on application of any party having a cause or any matter pending in the Court, issue a subpoena for a witness, under the seal of the Court. The Clerk may issue separate subpoenas for each person, issue one subpoena carrying the names of all persons subpoenaed, or may at the request of any party, issue subpoenas in blank. A subpoena may be served by a police officer affiliated with the Nation or the Bureau of Indian Affairs, or by the party, or any other person in the manner provided in Section 217. When a subpoena is not served by a police officer affiliated with the Nation or the Bureau of Indian Affairs, proof of service shall be shown by affidavit; but no costs of service of the same shall be allowed, except when served by the Seminole Nation Lighthouse Police Department, a licensed process server, Bureau of Indian Affairs Police, or a person serving by special appointment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 502. Subpoenas – Contents**

The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing or other thing, under his control, which he is bound by law to produce as evidence.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 503. Subpoena for Deposition**

When the attendance of the witness before any officer authorized to take depositions is required, the subpoena may be issued by such officer.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 504. Subpoena for Agency Hearings**

When the attendance of the witness is required before any agency authorized to issue a subpoena, the subpoena may be issued by any officer of the agency or by such person as maybe authorized to issue subpoena by agency rule.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 505. Witness May Demand Fees – Exception**

A witness may demand his traveling fees and fee for one (1) day's attendance as shall be set by Court rule, when the subpoena is served upon him; and if the same be not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and non-payment shall be stated in the return, except that witnesses subpoenaed by any department, board, commission or legislative committee authorized to issue subpoenas shall be paid their attendance and necessary travel, as provided by law for witnesses in other cases, at the time their testimony is concluded out of funds appropriated to such department, board, commission or legislative committee. In the case of subpoena issued by such agencies of the Nation, the witness may not refuse to attend because fees and travel expenses were not paid in advance.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 506. Disobedience of Subpoena**

Disobedience of a subpoena, or refusal to be sworn or to answer as a witness, when lawfully ordered, may be punished as a contempt of the Court or officer by whom his attendance or testimony is required.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 507. Attachment of Witness**

When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees), the Court or officer before whom his attendance is required may issue an attachment to the Chief of the Seminole Nation Lighthorse Police Department or the Bureau of Indian Affairs Police or their deputy, commanding him to arrest and bring the person therein named before the Court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the Court or officer, a sum may be fixed not to exceed One Hundred Dollars (\$100.00) in which the witness may give an undertaking, with surety, for his appearance; such sum shall be indorsed on the back of the attachment; and if no sum is so fixed and indorsed, it shall be One Hundred Dollars (\$100.00). If the witness be not personally served, the Court, may, by a rule, order him to show cause why an attachment should not issue against him.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 508. Punishment for Contempt**

(a) The punishment for the contempt provided in Section 507 of this Title shall be as follows: When the witness fails to attend, in obedience to the subpoena, except in case of a demand and failure to pay his fees, the Court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00). In case the witness attend but refuses to be sworn or to testify, the court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00), or may

imprison him in a detention facility, there to remain until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the Court or an agency shall be paid into the Nation's treasury, and that imposed by the officer at a deposition shall be for the use of the party for whom the witness was subpoenaed. The witness shall, also, be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

(b) The punishment provided in this section shall not apply where the witness refuses to subscribe a deposition. The punishment provided in this section is civil in nature, and shall not be interpreted in any way as a criminal punishment, nor shall the punished person be deemed convicted of any criminal offense.

(c) When the witness purges his contempt, the Court, officer, or agency may suspend any punishment imposed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 509. Discharge When Imprisonment Illegal**

A witness so imprisoned by an officer before whom his deposition is being taken, or by an officer of an agency, may apply to a judge of the District Court who shall have power to discharge him, if it appears that his imprisonment is illegal.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 510. Requisites of Attachment – Order of Commitment**

Every attachment for the arrest, or order of commitment to jail of a witness by the Court or an officer pursuant to this Chapter must be under the seal of the Court or officer, if he have an official seal, and must specify, particularly the cause of arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the Seminole Nation Lighthorse Police or Bureau of Indian Affairs Police and shall be executed by committing him to a detention facility, and delivering a copy of the order to the jailor.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 511. Examination of Prisoner**

A person confined in a detention facility may by order of the District Court, be required to be produced for oral examination at a hearing, but in all other cases his examination must be by deposition.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 512. Prisoner's Custody During Examination**

While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge who shall afford reasonable facilities for the taking of the deposition.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 513. Witness Privileged**

A witness shall not be liable to be sued in the District Court if he does not reside within the Nation by being served with a summons while going, returning, or attending in obedience to a subpoena.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 514. Witness May Demand Fees Each Day – Exception**

At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena; and if the same be not paid he shall not be required to remain, except witnesses subpoenaed by the General Council or any department, board or commission of the Nation, or any other body authorized by law to issue subpoenas shall be paid for their attendance and necessary travel from that agency's approved budget as provided by law in other cases at the time their testimony is completed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 515. Special Provisions for Agencies of the Nation**

(a) No agent or employee of the Nation may be required to attend and testify in their official capacity for any private party absent the consent of their Department head or higher ranking superior.

(b) No agent or employee of the Nation may be paid a witness fee in addition to their regular salary or other compensation, if they are on duty at the time they are required to attend and testify, and shall be deemed to have elected to receive their regular salary or other compensation unless they request leave without pay prior to the time they appear in response to the subpoena, provided, that when such agents or employees appear and testify while being paid the regular salary or other compensation. The normal witness fee shall be charged as costs in the case for the benefit of the Nation, and the agent or employee's supervisor may require prepayment of said fees as a condition precedent of his approval for their appearance. Such witnesses shall be entitled to receive their travel costs, if any, from the party in advance as in other cases.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

Section 516. **RESERVED**

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**Section 549. RESERVED**

## **SUBCHAPTER A**

### **TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION**

#### **Section 550. Privilege for Committee Testimony**

No testimony given by a witness before the General Council, or any agency established by law having power to issue a subpoena, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony if such person is granted immunity as provided in Section 551. An official paper or record produced by him is not within the privilege.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 551. Procedure for Claiming Privilege**

In the case of proceedings before a committee or agency, when two-thirds (2/3) of the members of the full committee or agency shall by affirmative vote have authorized such witness to be granted immunity under this Chapter with respect to the transactions, matters, or thing, concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence by direction of the presiding officer, and, when an order of the District Court has been entered into the record requiring said person to testify or produce evidence, such person shall be privileged as stated in Section 550 of this Title. Such an order may be issued by a District Court Judge upon application by a duly authorized representative of the committee or agency concerned, accompanied by the written approval of the General Council. The Court shall not grant immunity to any witness without first having notified the Attorney General of such action. The Attorney General shall be notified of the time of each proposed application to the District Court and shall be given an opportunity to be heard with respect thereto prior to the entrance into the record of the order of the District Court. No witness shall be exempt from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this Section.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 552. Oaths**

The members of the General Council, a Chairman or equivalent officer of any committee or agency authorized to issue subpoenas, and any officer or employee of the commission or agency authorized by agency or commission rule, is empowered to administer oaths to witness in any case under their examination.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 553. Penalties**

(a) Every person who having been summoned as a witness, by authority of the General Council or other agency authorized to take testimony and compel attendance of witnesses by subpoena, to give testimony or produce papers under a grant of immunity as provided by Section 551 upon any matter under inquiry before that body, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be punishable by a civil fine of not more than Five Hundred Dollars (\$500.00) to be imposed by that body, and to an attachment and commitment to be imposed by that body to a detention facility until such testimony be given.

(b) In addition to, or in the alternative to civil punishment, the agency may proceed in the District Court for an order requiring such witness to testify, and if such order is issued and disobeyed by the witness, the witness shall be guilty of an offense, and may be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in a detention facility for a term not exceeding six months, or both.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 554. Disgrace as Ground for Refusal to Testify**

No witness is privileged to refuse to testify to any fact, or produce any paper, respecting which he shall be examined by the General Council, or by any subordinate committee or agency thereof authorized to issue subpoenas, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace or otherwise render him infamous, provided that such fact or paper is reasonably related to the purpose of the hearing and the purpose of the hearing is reasonably related to the exercise by the body, agency, or committee of authority delegated to it by law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 555. Prosecution**

Whenever an body before whom a witness granted immunity pursuant to this Subchapter believes that criminal prosecution pursuant to Section 553(b) should be instituted, it shall certify such fact to the Attorney General, whose duty it shall be to bring the matter in the Court by information or complaint for prosecution if the person has not purged his contempt within 48 hours.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 556. Fees and Mileage**

(a) Witnesses before legislative and administrative bodies compelled to attend by subpoena shall be paid the same fees and mileage as are paid in civil cases in the District Court from the approved budget of said body.

(b) Witness fees and allowances for mileage shall be set by rule of the court. Witness fees shall not exceed the amount set for witness fees by Part 11 of Title 25 of the Code of Federal Regulations. Mileage fees shall not exceed the federal mileage rate.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER SIX**

### **JURORS**

#### **Section 601. Meeting for Selection of Jurors**

(a) On the first Monday in November, or as soon thereafter as may be practical, and, at any time upon the order of the Chief Justice of the Supreme Court, the Jury Selection Board, composed of the Secretary of the General Council or designee, the Director of the Seminole Nation Tax Commission or designee, the Chief of the Seminole Nation Lighthouse Police Department or one of his deputies, the Chairman of the Board of Commissioners of the Seminole Nation Housing Authority or designee, the Court Clerk or designee, and one of the Judges of the Court, shall meet at the office of the Court Clerk and select from a list to be compiled of all qualified jurors, as prescribed in this Chapter, all qualified jurors for service in the District Court for the ensuing calendar year in the manner hereinafter provided.

(b) For the purpose of ascertaining the names of all persons qualified for jury service, it shall be the duty of the following officers to provide the following lists of qualified prospective jurors to the Court Clerk:

- (1) The Secretary of the General Council shall supply a list of all enrolled members over eighteen (18) years of age who reside within the Nation.
- (2) The Director of the Seminole Nation Tax Commission shall supply a list of all individual taxpayers over eighteen (18) years of age who are reside within the Nation regardless of whether such individuals are enrolled members of the Nation.
- (3) The Chairman of the Board of Commissioners of the Seminole Nation Housing Authority shall supply a list of all known tenants of the Housing Authority and members of their households irrespective over eighteen (18) years of age who reside within the Nation regardless of whether such individuals are enrolled members of the Nation.
- (4) The Director of Human Resources of the Nation shall supply a list of all known employees of the Nation over eighteen (18) years of age regardless of whether such individuals are enrolled members of the Nation.
- (5) The Court Clerk shall supply a list of all persons over eighteen (18) years of age who have registered upon the Court Clerk's Jury Selection Roll for jury service regardless of whether such individuals are enrolled members of the Nation.

(c) Each such list shall contain, insofar as is known, the date of birth or age, name, and actual place of residence of each person within the category on the list.

(d) Whenever possible, these lists shall be prepared at least thirty (30) days prior to the meeting to allow time for the typing of the names contained therein on cards as hereafter provided, or shall be presented typed upon the cards as hereafter provided.

(e) Whenever such is, or may become reasonably available and efficient, the lists may be printed from computer memory on cards in the manner hereinafter provided.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013; amended by TO 2015-02, June 6, 2015; effective July 6, 2015.]

### **Section 602. Court Clerk's Jury Selection Roll**

It shall be the duty of the Court clerk to maintain at all times a Jury Selection Roll upon which any person who is or may be eligible for jury service may enter their name, date of birth, and place of residence. Such roll shall be provided in order that all qualified persons who may not be identified in paragraph (1), (2) or (3) of subsection (b) of Section 601 of this Chapter shall have the opportunity for jury service.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013; amended by TO 2015-02, June 6, 2015; effective July 6, 2015.]

### **Section 603. Selection of Jurors**

(a) The Court Clerk shall provide for the selection of names of persons eligible for service as jurors. Jurors shall be 18 years of age and older and, notwithstanding any other law of the Seminole Nation or any of its agencies, shall be chosen from the following classes of persons:

- (1) Tribal members living on or near the Seminole Nation's Indian country;
- (2) Residents within the territorial boundaries of the Seminole Nation;
- (3) Employees of the Seminole Nation or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Seminole Nation for at least one continuous year prior to being called as a juror.

(b) Formation of Jury. Juries will be comprised of six jurors. A person may be excused from serving on a jury upon good cause shown under oath to a Judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work-related responsibilities, except under extraordinary circumstances. The Judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused for employment reasons. Members of the Board of Directors shall be exempt from serving on juries during their terms of office.

- (1) Random Selection. The Clerk of the Court will randomly select a minimum of 25 names from the jury pool.
- (2) Juror Summons. The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013; amended by TO 2015-02, June 6, 2015; effective July 6, 2015.]

#### **Section 604. Drawing General Jury Panel**

(a) The Judges of the Court shall, more than twenty (20) days prior to each jury docket of Court, determine approximately the number of jurors that are reasonably necessary for jury service in the Court during the jury docket, and shall thereupon order the drawing of such number of jurors from the wheel, said jury to be known as the general panel of jurors for service for the respective jury docket for which they are designated to serve. A majority of said judges, or the Chief Judge, are authorized to act in carrying out the provisions of this Section.

(b) The Court Clerk or one of his deputies and the Chief of the Seminole Nation Lighthorse Police Department or one of his deputies in open court and under the directions of the Chief Judge of the District Court, or during his absence, some other Judge of the District Court, shall select jurors pursuant to the plan provided for in Section 603. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. Additional and other drawing of as many names as the Court may order may be had at any such time as the Court or Judge may order for the completion of a jury panel, or for the impaneling of a new jury if, in the judgment of the Court, the same shall be necessary, or, for any cause, the Court, in its discretion, shall deem other jurors necessary. The Court may excuse or discharge any person drawn and summoned as a juror, whenever, in its discretion, such action shall be deemed expedient.

(c) No person may be required, over his objection, to render service as a juror for more than a total of twenty (20) working days in any one (1) calendar year unless, when this time limit is reached, he is sitting upon a panel engaged in the consideration of a case, in which event he may be excused when such case is terminated; provided, that if the Judge is of the opinion that the jury business of a jury docket fixed by the Court may be concluded within six (6) days, he may require a jury, or a juror, to remain until the termination of said jury service. Persons summoned for jury service need not be required to serve during previously fixed days or weeks or a docket fixed by the Court for jury trials, but they may be recalled from time to time as the trial needs of the District Court may require, without regard to the docket term fixed by the Court for jury trials for which they were originally summoned.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013.]

### **Section 605. Use of Jury Panel**

The general panel of jurors shall be used to draw juries in all actions tried during the jury docket for which they were summoned. In the event of a deficiency of said general panel at any given time to meet the requirements of the Court, the presiding Judge having control of said general panel shall order such additional jurors to be selected pursuant to the plan adopted pursuant to Section 603, as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are not further needed. However, when only a single jury is needed or when the Court determines that undue delay will be caused thereby to the prejudice of a party, in which case the Court may issue an open venire to the Chief of the Seminole Nation Lighthorse Police Department or other suitable person for such number of jurors as may be necessary to be selected from the body of the Nation without resort to plan adopted pursuant to Section 603, provided, that no person shall be called to service or required to serve under an open venire more often than once each year.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013.]

### **Section 606. Certifying and Sealing Lists**

The list of names so drawn for the general panel shall be certified under the hand of the Court Clerk or the deputy doing the drawing and the Judge in whose presence said names were drawn from the wheel to be the list drawn by the said Clerk for the said jury docket, and shall be sealed up in envelopes endorsed “jurors for the jury docket of the District Court scheduled to commence on \_\_\_\_\_” (filling in the blank with the appropriate date) and the Clerk doing the drawing shall write his name across the seals of the envelopes.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 607. Oath and Delivery of Envelopes**

The Judge attending the selection of members of the jury pool shall deliver such envelopes to the Court Clerk, or one of his deputies, and the Judge shall, at the same time, administer to the Court Clerk and to each of his deputies an oath in substance as follows: “You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to anyone the name or names of person appearing on the jury lists until the time a list is opened as prescribed by law at which time it shall be published, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in the Court at the next jury docket, so help you God.”

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013.]



**Section 608. Sealing and Returning Juror Name Cards**

REPEALED.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; repealed by TO 2013-16, October 26, 2013.]

**Section 609. Refilling Wheel**

REPEALED.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; repealed by TO 2013-16, October 26, 2013.]

**Section 610. Summoning Jurors**

The summons of person for service on the juries in the District Court shall be served by the Court Clerk by mailing a copy of such summons containing the time, place, and the name of the Court upon which said jurors are required to attend, by registered or certified mail, or as directed by the Judge, to the person selected for service not less than ten (10) days before the days said person is to appear as a juror in the Court. The Court Clerk shall make a return of such service by tiling an affidavit stating the date of mailing and type of mail used in the sending the summons; provided, that this shall not prevent service of special open venire or talesman by the Chief of the Seminole Nation Lighthouse Police Department.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 611. On-Call System – Jurors**

(a) When an on-call system is implemented by order of the Chief Judge of the District Court, each juror retained for service subject to call shall be required to contact a center for information as to the time and place of his next assignment.

(b) For purposes of this Section, “on-call system” means a method whereby the Chief Judge of the District Court estimates the number of jurors required for a jury docket of court, and those jurors not needed during any particular period are released to return to their home or employment subject to call when needed.

(c) Pursuant to summons for service on petit juries in the District Court, each qualified, nonexempt juror is retained for service subject to call and is assigned to a judge or a case.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 612. Drawing Trial Jurors from Panel**

Prospective jurors for the trial of an action shall be drawn by the Court Clerk, in open Court in the presence of a Judge, by lot, wheel or any other method that ensures a random selection. The initial six jurors shall be drawn as shortly before the trial of the action as is reasonably practical in the discretion of the Court. As prospective jurors are removed or dismissed by challenge, whether preemptory or for cause, the Clerk shall draw another name from the general pool who shall take the place of the challenged prospective juror and be subject to voir dire to the same extent as the prospective jurors originally chosen.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013.]

## **Section 613. Qualifications and Exemptions of Jurors**

(a) All members of the Nation and other citizens of the United States who are over eighteen (18) years of age and have resided within the Nation for a period of thirty (30) days, or are employees of the Nation, who are of sound mind and discretion and of good moral character are competent to act as jurors, except as herein provided.

(b) The following persons are not qualified to serve as jurors:

- (1) Justices of the Supreme Court, or the employees in their office.
- (2) Judges of the District Court, or the employees in their office.
- (3) The Court Clerk, or the employees in his office.
- (4) The Chief of the Seminole Nation Lighthorse Police Department, his deputies, and the employees in the Police Department.
- (5) Jailors having custody of prisoners, or other Tribal, state, or federal law enforcement officers.
- (6) Licensed attorneys or advocates engaged in the practice of law.
- (7) Persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal or pardoned or when any such person has been fully restored to his civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible to serve as a juror.
- (8) Elected officials.

(c) Persons over seventy (70) years of age, ministers, practicing physicians, optometrists, dentists, public school teachers, federal employees, regularly organized full time

fire department employees, and women with otherwise unattended minor children not in school may be excused from jury service by the Court, in its discretion, upon request.

(d) Any person who is a member of the Nation, pays taxes to the Nation, or is employed within the Nation may serve as a juror notwithstanding that they are not a resident of the Nation if they volunteer to do so by signing the Jury Selection Roll maintained by the Court Clerk.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013.]

#### **Section 614. Substantial Compliance**

A substantial compliance with the provisions of this Chapter shall be sufficient to prevent the setting aside of any verdict rendered by a jury chosen hereunder, unless the irregularity in drawing, and summoning, or impaneling the same, resulted in depriving a party litigant of some substantial right; provided, however, that such irregularity must be specifically presented to the Court at or before the time the jury is sworn to try the cause.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 615. Oath to Jury**

After selection of the jury, and prior to the opening statements of the parties, the Court or Clerk shall place the jury under oath or affirmation to well and truly try and determine the action before them exclusively upon the evidence presented in the Court and the law as given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 616. Discharge of Employee for Jury Service – Penalty**

Every person, firm, or corporation who discharges an employee or causes an employee to be discharged because of said employee's absence from his employment by reason of said employee's having been required to serve as a juror on the jury of the District Court, or any other Court, shall be guilty of an offense, and, upon conviction thereof, shall be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 617. Civil Liability – Damages**

Every person, firm, or corporation who discharges or causes to be discharged an employee because of said employee's absence from his employment by reason of said employee having

been required to serve as a juror on a jury, in the District Court or any other Court, shall be liable to the person so discharged in a civil action at law for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining, if any, and a reasonable attorney fee to be determined by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER SEVEN TRIALS**

### **Section 701. Trial Defined**

A trial is a judicial examination of the issues, whether of law or fact, in an action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 702. Trial of Issues**

Issues of law must be tried by the Court. Issues of fact arising in actions for which a jury trial is provided by law may be tried by a jury, if a jury trial is demanded, unless a reference be ordered as hereinafter provided. All other issues of fact shall be tried to the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 703. Jury Trial of Right**

(a) Rights Preserved. The right of trial by jury as declared by the Constitution or a statute of the Nation, or the Indian Civil Rights Act of 1968 shall be preserved inviolate. In all actions, except forcible entry and detainer, arising in contract or tort where the amount in controversy, or the value of the property to be recovered as stated in the prayer for relief or an affidavit of a party, or as found by the Court where the amount in controversy is questioned by the affidavit of the adverse party, exceeds Ten Thousand Dollars (\$10,000.00), except as otherwise specifically provided by law and in tax cases, and in all actions for the involuntary removal of children from the custody of their parents, or custodian and the involuntary termination of parental rights, the action may be tried to a jury upon demand of any party. All other actions and issues of fact shall be tried to the Court.

(b) Demand. Any party entitled to a jury trial may demand a trial by jury of any issue triable of right by a jury pursuant to any law of the Nation by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow the party making such demand deposit with the Court Clerk a reasonable jury fee in such amount as the Court shall by rule determine. The amount of such deposit shall be set by the Court in such amount as may be reasonably necessary to offset the costs of juror fees for the impaneling and trying of the action, without being in an amount which may preclude or prevent a party from exercising their right to a jury trial. Such rules shall contain a provision for waiver of the deposit requirement for person proceeding in forma pauperis.

(c) Same; Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the

issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten (10) days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this section and to file it as required by Section 225(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the court in other actions, in the following manner: (i) by the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney, (ii) by written consent, in person or by attorney, filed with the clerk, and (iii) by oral consent, in open court, entered on the journal.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 704. Trial by Jury or By the Court**

(a) By Jury. When trial by jury has been demanded as provided in Section 703, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

- (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court and entered in the record, consent to trial by the Court sitting without a jury;
- (2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution and laws of the Nation, or under the Indian Civil Rights Act.

(b) By the Court. Issues not demanded for trial by jury as provided in Section 703 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by a jury of any or all issues properly triable to a jury.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or its own initiative may try any issue with an advisory jury or, except in actions against the Nation when a Statute provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 705. Assignment of Cases for Trial**

The District Court shall provide by rule for the placing of actions upon the trial calendar:

- (a) without request of the parties; or
- (b) upon request of a party and notice to the other parties; or
- (c) in such other manner as the Court deem expedient. Precedence shall be given to actions entitled thereto by any statute of the Nation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 706. Consolidation: Separate Trials**

(a) Consolidation. When different actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

(b) Separate Trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or any separate issue or any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Indian Civil Rights Act, the Constitution or as given by a statute.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 707. RESERVED**

**Section 708. RESERVED**

**Section 709. RESERVED**

**Section 710. RESERVED**

**Section 711. RESERVED**

**Section 712. RESERVED**

**Section 713. RESERVED**

**Section 714. RESERVED**

**Section 715. RESERVED**

**Section 716. RESERVED**

**Section 717. RESERVED**

**Section 718. RESERVED**

**Section 719. RESERVED**

**Section 720. RESERVED**



**SUBCHAPTER A**  
**IMPANELING JURY**

**Section 721. Summoning Jury**

The general mode of summoning and impaneling the jury, in cases in which a jury trial may be had, is such as is or may be provided by Chapter 6 of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 722. Causes for Challenging Jurors**

If there shall be impaneled, for the trial of any action, any juror, who shall have been convicted of any crime which by law rendered him disqualified to serve on a jury; or who has been arbitrator on either side, relating to the same controversy; or who has an interest in the action; or who has an action pending between him and either party; or who has formerly been a juror on the same claim; or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party within the second degree of blood or marriage, he may be challenged for such causes; in either of which cases the same shall be considered as a principal challenge, and the validity thereof be tried by the Court; and any juror who shall be returned upon the trial of any of the causes hereinbefore specified, against whom no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or any other cause that may render him, at the time, an unsuitable juror; but a resident or taxpayer of the Nation, or a member of the Nation or any municipality therein shall not be thereby disqualified in actions in which the Nation or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 723. Examination of Jurors**

The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the Court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 724. Alternate Jurors**

The Court may direct that not more than three (3) jurors in addition to the regular jury be called an impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one (1) peremptory

challenge in addition to those otherwise allowed by law if alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 725. Order of Challenges**

The plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may, in turn, in the same order, have the right to challenge one juror each, until each shall have peremptorily challenged three jurors, but no more.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 726. Challenges to Jurors – Filling Vacancies**

After each challenge, the vacancy shall be filled before further challenges are made; and any new juror thus introduced may be challenged for cause as well as peremptorily.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 727. Alternate Method of Selecting Jury**

Notwithstanding other methods authorized by law, the trial judge may direct in his discretion that a jury in an action be selected by calling and seating twelve (12) prospective jurors in the jury box and then examining them on voir dire; when twelve (12) such prospective jurors have been passed for cause, each side of the lawsuit shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three (3) names each from the list of those so passed for cause, and the remaining six (6) persons shall be sworn to try the case.

If there be more than one (1) defendant in the case, and the trial judge determines on motion that there is a serious conflict of interest between them, he may, in his discretion, allow each defendant to strike three (3) names from the list of jurors seated and passed for cause. In such case he shall appropriately increase the number of jurors initially called and seated in the jury box for voir dire examination.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 728. Oath of Jury**

The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 729. Juries of Less Than Six - Majority Verdict**

All juries shall be composed of six (6) persons, and a unanimous verdict shall be required, except that the parties may stipulate that the jury shall consist of any number less than six (6) and greater than two (2), or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 730. RESERVED**

## **SUBCHAPTER B**

### **TRIAL PROCEDURE**

#### **Section 731. Order of Trial**

When the jury has been sworn in an action before a jury, and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

(a) The party on whom rests the burden of proving the issues may briefly state his case, and the evidence by which he expects and sustain it.

(b) The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or the adverse party may reserve his opening statement until the beginning of the presentation of his evidence.

(c) The party on whom rests the burden of proving the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose a motion for a directed verdict thereto upon the ground that no claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of the jury shall be required, but judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleading or the proof shall demand.

(d) If the motion for a directed verdict is overruled, the adverse party may then briefly state his case if he did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his evidence.

(e) The parties will then be confined to rebutting evidence unless the Court, for good reasons in the furtherance of justice, shall permit them to offer evidence in the original case.

(f) After the close of the evidence, and when the jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn therefrom. The party having the burden of proving the issue shall first present his argument. Thereafter, the other party shall present his argument, and then, the party having the burden of proof shall have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument, provided, that each side to the action should have the same total for argument if time restrictions are placed thereon.

(g) After the closing arguments of the parties have been completed, the Court shall instruct the jury as to the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.

(h) The Court shall then place the bailiff or some other responsible person under oath to secure the jury against interference, and the jury shall retire to determine its verdict.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 732. Taking of Testimony**

(a) Form. In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by this Title, Title 13, other applicable law or other rules adopted by the Supreme Court.

(b) Affirmation in Lieu of Oath. Whenever under this Title an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record, the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(d) Interpreters. The Court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 733. Exceptions Unnecessary**

Formal exceptions to rulings or orders of the Court are unnecessary, but it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 734. Instruction to Jury – Objection**

(a) At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto or proposes the requested instruction before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(b) All instructions requested, and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his attorney asking the same and filed in the record of the case.

(c) When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that is shall distinctly appear what instructions were given in whole or part, and in like manner those refused, to that either party may except to the instructions as asked for, or as modified, or the modification, or to the refusal.

(d) All instructions given by the Court must be numbered, signed by the Judge, and filed together with those asked for by the parties as a part of the record.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 735. Uniform Jury Instructions**

The Supreme Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials of civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 736. Objections to Instructions – Copies to Parties**

A party objecting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection thereto by dictating into the record in open Court, out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the number of the particular instruction given by the Court that is excepted to. Provided further, that the Court shall furnish copies of the instructions are given by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 737. View by Jury**

Whenever, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury is thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 738. Deliberations of the Jury**

When the case is finally submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the Court, subject to the discretion of the court, to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 739. Admonition of Jury on Separation**

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the case is finally submitted to them.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 740. Information After Retirement**

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony on the point in dispute, or cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their Counsel. Upon motion in appropriate circumstances, the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 741. When the Jury May be Discharged**

The jury may be discharged by the Court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the Court that there is no probability of their agreeing.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]



## **Section 742. Re-trial**

In all cases where the jury is discharged during the trial, or after the cause is submitted to it, the case may be tried again immediately, or at a future time, as the Court may direct.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 743. Proof of Official Record**

### **(a) Authentication.**

- (1) Domestic. An official record kept within the United States, or any Indian Tribe, state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Island, or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public office having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.
- (2) Foreign. A foreign official record, or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul, general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign county assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the

The Court may, for good cause shown, (A) admit an attested copy without final certification or (B) permit the foreign official record to be evidence by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this Section in the case of a domestic record, or complying with

the requirements of subdivision (a)(2) of this Section for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This Section does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 742 to 743 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 744. Determination of Foreign Law**

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Title 13. The Court's determination shall be treated as a ruling on a question of law. The District Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every other federally recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 745. Appointment and Duties of Masters**

(a) Appointment and Compensation. The District Court, with the concurrence of a majority of all the Judges thereof, may appoint one or more standing masters, and the trial judge, in an appropriate case, may appoint a special master to act in a particular case. The word "master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the Court as the Court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In action to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations

stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writing applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order or reference and has the authority to put witnesses on oath and may himself examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Section 732(c) for a Court sitting without a jury.

(d) Proceedings.

- (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.
- (2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Section 223. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Section 412(b) and 222(f).
- (3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

- (1) Content and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference, and, if required to make

findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

- (2) In Non-Jury Actions. In an action to be tried without a jury, the Court shall accept the master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Section 226(d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.
- (3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.
- (4) Stipulation as to Findings. The effect of master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that the master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.
- (5) Draft Report. Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 746. RESERVED**

**Section 747. RESERVED**

**Section 748. RESERVED**

**Section 749. RESERVED**

**Section 750. RESERVED**

## **SUBCHAPTER C**

### **VERDICT**

#### **Section 751. Findings by the Court**

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Section 907; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which shall constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Section 112(b) or Section 121(b).

(b) Amendment. Upon motion of a party made not later than ten (10) days after entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Section 108. When findings of fact are made in action tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the District Court an objection to such findings or has made a motion to amend them or a motion for judgment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 752. Delivery of Verdict**

When the jury have agreed upon their verdict, they must be conducted into Court, and their verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the Clerk or the court asking each juror if it is his verdict. If anyone answers in the negative, the jury must again be sent out, for further deliberation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 753. Requisites of Verdicts**

The verdict shall be written, signed by the foreman and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury, before they are discharged, be corrected by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 754. General and Special Verdict**

The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the Court but to draw from them conclusions of law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 755. Special Verdict and Interrogatories**

(a) Special Verdicts. The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waived his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decisions of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are consistent with each other, judgment shall be entered thereon, but, when the answers to one or more interrogatories is inconsistent with the general verdict, judgment may be entered pursuant to Section 907 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 756. Jury Must Assess Amount of Recovery**

When by the verdict either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 757. Motions for a Directed Verdict and for Judgment Notwithstanding the Verdict**

(a) Motion for Directed Verdict: When Made; Effect. A party who moves for a directed verdict made at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefor. The order of the Court granting a motion for a directed verdict is effective without any assent of the jury.

(b) Motion for Judgment Notwithstanding the Verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten (10) days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten (10) days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of the judgment as if the requested verdict had been directed. If no verdict was returned, the Court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion.

(1) If the motion for judgment notwithstanding the verdict, provided for in subsection (b) of this Section, is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial.

If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the Supreme Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment

is reversed on appeal, subsequent proceedings shall be in accordance with the order of the Supreme Court.

- (2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Section 908 not later than ten (10) days after entry of the judgment notwithstanding the verdict.

(d) Same: Denial of Motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the Supreme Court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Supreme Court reverses the judgment, nothing in this Section precludes it from determining that the appellee is entitled to a new trial, or from directing the trial Court to determine whether a new trial shall be granted.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 758. RESERVED**

**Section 759. RESERVED**

**Section 760. RESERVED**

**Section 761. RESERVED**

**Section 762. RESERVED**

**Section 763. RESERVED**

**Section 764. RESERVED**

**Section 765. RESERVED**

**Section 766. RESERVED**

**Section 767. RESERVED**

**Section 768. RESERVED**

**Section 769. RESERVED**

**Section 770. RESERVED**



## **SUBCHAPTER D**

### **MISCELLANEOUS TRIAL PROVISIONS**

#### **Section 771. Provisions Applicable to Trials by Court**

The provisions of this Chapter respecting trials by jury apply, so far as they are in their nature applicable, to trials by the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 772. Trial Docket**

A trial docket shall be made out by the Clerk of the Court, at least fifteen (15) days before the first day of each jury or non-jury docket of the Court, and the actions shall be set for particular days in the order prescribed by the Judge of the Court, and so arranged that the cases set for each day shall be considered as nearly as may be on that day. The trial docket shall be promptly mailed by the Clerk to each party or their attorney of record whose action is placed on the trial docket.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 773. Trial Docket for Bar**

The Clerk shall make out a copy of the trial docket for the use of the bar, before the first day of the docket of the Court and cause the same to be available to the public.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 774. Order of Trial of Cases Docketed**

The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by the request of the parties with the approval of the Court, or the order of the Court, they are continued or placed at the heel of the docket, unless the Court, in its discretion, shall otherwise direct. The Court may, in its discretion, hear at any time a motion, and may by rule prescribe the time for hearing motions.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 775. Time of Trial**

(a) Actions shall be triable at the first trial docket of the Court, after or during which the issues therein, by the time fixed for pleading are, or shall have been made up and discovery completed. When the issues are made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and shall stand

for trial at such term twenty (20) days after the issues are made up and discovery completed, and shall, in case of default, stand for trial forthwith.

(b) The Court shall arrange its business so that two (2) non-jury trial dockets and two (2) jury trial dockets are completed during each calendar year, unless the majority of the judges of the Court by order determine that additional trial dockets are necessary to promptly dispose of the cases pending before the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 776. Continuance**

The trial of an action shall not be continued upon the stipulation of the parties alone, but may be continued upon order of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 777. Trial by Judicial Panel**

(a) The Supreme Court may provide by rule for the trial of any action in the District Court by judicial panel in any or all cases when no jury is allowed by law or demanded by the parties. The judicial panel shall consist of the presiding judge to whom the case was assigned, who shall make all rulings on questions of law during the trial of the action, and two or more judges or special judges who shall hear the evidence. The Chief Justice of the Supreme Court, with the consent of the majority of the active Judges of the Supreme Court, is hereby authorized to freely appoint any person licensed to practice law before the Court as a Special Judge for the purpose of sitting upon a judicial panel, and may compensate such person out of the Court fund reasonable compensation for his services, in an amount not exceeding the daily rate paid to regular Judges of the court.

(b) The judicial panel shall jointly, by majority vote, determine the facts proved by the evidence and the panel shall enter findings of fact and conclusions of law as in a trial before a single Judge.

(c) In a trial before a judicial panel, the votes of the Judges on the panel shall not be revealed, but the verdict and judgment shall be entered in accordance with the panel's findings of fact and conclusions of law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 778. Bifurcated Jury Trials**

(a) The Supreme Court may provide by rule for the bifurcation of any jury trial in a civil action sounding in tort so that the jury shall first hear evidence on, and render its verdict

upon the issue of liability, and thereafter hear evidence on and render its verdict upon the issue of the amount of damages if liability has been found.

(b) In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any part of a judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages.

(c) In any such cases not provided for by Court rule, the case may be determined in bifurcated proceedings as stated in Subsections (a) and (b) of this Section by stipulation of the parties.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER EIGHT PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS**

### **Section 801. Seizure of Person or Property**

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Nation, existing at the time the remedy is sought.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 802. Receivers Appointed by District Courts**

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with applicable probate law, or, if none, then the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the District Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 803. Deposit in Court**

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing.

Money paid into Court under this Section shall be deposited and withdrawn in accordance with applicable law detailing accounting procedures for the Court Clerk's Office, and if there be none, then in accordance with the applicable procedure for the administration and accounting of federal grant monies, upon order of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 804. Process in Behalf of and Against Persons Not Parties**

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 805. Security – Proceedings Against Sureties**

Whenever this Title or other applicable law requires or permits the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any paper affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

Any surety authorized to give a bond or stipulation or other undertaking in either the Federal courts or the State courts within the State within which any portion of the Nation lies, and any individual approved by the Court who reside within the jurisdiction of the Nation (except officers of the Court or elected officials) shall be eligible to give such bond or stipulation, or undertaking in the District Court under this Title of other applicable law unless otherwise prohibited by law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 806. Execution**

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in this Title.

(b) Against Certain Public Officers. When a judgment otherwise authorized has been entered against a collector or other officer of revenue of the Nation or against an officer, employee, or agency thereof in their official capacity; or if judgment is entered against an individual in his person capacity who purported to act as an officer or employee of the Nation, and the Court has given certificate of probable cause for his act wherein the Court determines that the individual had probable cause to believe that his action was authorized by the Nation in his official capacity, execution shall not issue against the officer or his property but the final judgment shall be satisfied as may be provided by appropriation of such judgment (or such part thereof as the General Council deems permissible considering the extent of available resources) from funds available for the Nation to pay such judgment. This section is not intended, nor shall it be construed, as a waiver of sovereign immunity.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 807. RESERVED**

**Section 808. RESERVED**

**Section 809. RESERVED**

**Section 810. RESERVED**

## **SUBCHAPTER A INJUNCTIONS**

### **Section 811. Injunction Defined**

The injunction provided for by this Chapter is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 812. Cause for Injunction – Temporary Restraining Order**

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may also be granted in any case where it is specially authorized by statute.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 813. Temporary Restraining Order: Notice: Hearing: Duration**

A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his attorney only if:

(a) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

(b) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

A temporary restraining order should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with



the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 814. Temporary Restraining Order – Service**

Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 815. Preliminary Injunction**

(a) Notice. No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

(b) Consolidation of Hearing with Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This Subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 816. Preliminary Injunction – Criteria**

Unless a statute of the Nation provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

(a) There is a substantial likelihood that the moving party will eventually prevail on the merits of their claim for a permanent injunction or other relief, and

(b) The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages, and

(c) The threatened injury to the moving party outweighs whatever damage or injury

the proposed preliminary injunction may cause the opposing party, and

(d) The preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Nation or the United States.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 817. Form and Scope of Injunction or Restraining Order**

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 818. Employer and Employee: Interpleader: Constitutional Cases**

This Subchapter does not modify any statute of the Nation relating to temporary restraining orders and preliminary injunctions in action affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 819. Security**

(a) No restraining order or preliminary injunction shall be issued except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs, damages, and a reasonable attorney fee as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Nation or of an officer or agency thereof.

(b) The provisions of Section 805 apply to a surety upon a bond or undertaking under this Section.

(c) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appears that the surety in the undertaking has removed from the Nation, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 820. Use of Affidavits**

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 821. Injunction by Defendant**

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the manner hereinbefore prescribed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 822. Injunction is Equitable**

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. The District Court shall not enjoin the enforcement of the Nation's tax laws or the collection of taxes owed to the Nation except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a Governmental officer or employee when such officer or employee has been delegated the authority to exercise his discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by applicable law or the Indian Civil Rights Act.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 823. Modification of Preliminary Injunction**

If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the Clerk of the Court and recorded.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 824. Modification of Permanent Injunction**

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the

rights of the parties.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 825. Injunctions Tried to the Court**

All injunctions shall be tried to the Court and not to a jury unless the Court orders an advisory jury pursuant to Section 704(c) of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 826. Enforcement of Restraining Orders and Injunctions**

A restraining order of injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any injunction may be punished by the Court or any Judge who might have granted it as a contempt. An attachment may be issued by the Court or Judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars (\$200.00) for each day of, or separate act of, contempt, to be paid into the Court fund, or by confinement in a detention facility for not longer than sixty (60) days.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 827. RESERVED**

**Section 828. RESERVED**

**Section 829. RESERVED**

**Section 830. RESERVED**

## **SUBCHAPTER B**

### **REPLEVIN**

#### **Section 831. Order of Delivery – Procedure**

(a) The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

- (1) The complaint must allege facts which show:
  - (A) a description of the property claimed,
  - (B) that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property,
  - (C) that the property is wrongfully detained by the defendant,
  - (D) the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable,
  - (E) that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Title, or any other means or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken, and,
  - (F) the prayer for relief requests that the Court issue an order for the immediate delivery of the property.
- (2) The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.
- (3) A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the Court Clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of the plaintiff's

complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 833 of this Title.

- (4) Nothing in this Title contained shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

(b) Where the notice that is required by subsection (a) of this Section cannot be served on the defendant but the Judge finds that reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the Chief of the Seminole Nation Lighthouse Police Department shall hold said property in such cases for three (3) working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date it is filed. The Court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice is filed before the Chief of the Seminole Nation Lighthouse Police Department turns the property over to the plaintiff, the Chief of the Seminole Nation Lighthouse Police Department shall retain control of the property pending the hearing on the motion.

(c) The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the Nation pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 832. Penalty for Damage of Property Subject to Order of Delivery**

Any person willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Title, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the office charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double

the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, which damages and fee shall be deemed bases on tortious conduct and enforced accordingly.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 833. Undertaking in Replevin**

The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him that he will return the same to the defendant if a return be adjudged; provided, that where the Nation or its agents or subdivisions is party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall be filed with the Clerk of the Court, and shall be subject to the provisions of Section 805 of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 834. Replevin Bond – Value**

On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 833 and 838 of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 835. Order of Delivery**

The order for the delivery of the property to the plaintiffs shall be addressed and delivered to the Chief of the Seminole Nation Lighthouse Police Department. It shall state the names of the parties, the Court in which the action is brought, and command the Chief of the Seminole Nation Lighthouse Police Department to take the property, describing it, and deliver it to the plaintiff as prescribed in this Title, and to make return of the order on a day to be named therein.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 836. Order Returnable**

The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten (10) days after it is issued.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 837. Execution of Order**

The Chief of the Seminole Nation Lighthorse Police Department shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of resident, or at the place such property was seized.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 838. Re-Delivery on Bond**

If, within three (3) working days after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the Court or the Chief of the Seminole Nation Lighthorse Police Department, an undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the Chief of the Seminole Nation Lighthorse Police Department shall return the property to the defendant. If such undertaking be not given within three (3) working days after service of the order, the Chief of the Seminole Nation Lighthorse Police Department shall deliver the property to the plaintiff.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 839. Exception to Sureties**

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Clerk. Upon hearing, the Court shall make such order as is just to safeguard the rights of the parties.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 840. Proceedings on Failure to Prosecute Action**

If the property has been delivered to the plaintiff, and judgment rendered against him, or his action be dismissed, or if he otherwise fail to prosecute his action to final judgment, the Court



shall, on application of the defendant or his attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 841. Judgment – Damages – Attorney Fees**

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 842. Officer May Break into Buildings**

The Chief of the Seminole Nation Lighthorse Police Department or other law enforcement officer, in the execution of the order of delivery issued by the District Court, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if not person having charge thereof is present.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 843. Compelling Delivery by Attachment**

In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Subchapter.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 842 to 843 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 844. Improper Issue of Order of Delivery**

Any order for the delivery of property issued under this Subchapter without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 845. Joinder of Cause of Action for Debt – Stay of Judgment**

In any action for replevin in the District Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 846. RESERVED**

**Section 847. RESERVED**

**Section 848. RESERVED**

**Section 849. RESERVED**

**Section 850. RESERVED**

## **SUBCHAPTER C**

### **ATTACHMENT**

#### **Section 851. Grounds for Attachment**

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

- (a) When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of the Nation (but no order of attachment shall be issued on this clause for any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within the Nation), or
- (b) When the defendant, or one of several defendants, has absconded with intention to defraud his creditors, or
- (c) Has left the trial jurisdiction to avoid the service of summons, or
- (d) So conceals himself that summons cannot be served upon him, or
- (e) Is about to remove his property, or a part thereof, out of the jurisdiction of the Court with the intent to defraud his creditors, or
- (f) Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors, or
- (g) Has property or rights in action, which he conceals, or
- (h) Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors, or
- (i) Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought, or
- (j) Where the damages for which the action is brought are for injuries arising from the commission of a criminal offense, or
- (k) When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery, or
- (l) When the action is brought by the Nation, or its officers, agents, or political agencies or subdivisions for the purpose of collection of any tax, levy, charge, fee, assessment, rental, or debt arising in contract or by Statute and owed to the Nation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 852. Attachment Affidavit**

An order of attachment may be issued by the court when:

(a) There is filed in the office of the court clerk a civil complaint stating a claim for relief and an application that the Court issue an order of attachment which states facts which show:

- (1) The nature of the plaintiff's claim,
- (2) That it is just,
- (3) The amount which the affiant believes the plaintiff ought to recover, and,
- (4) The existence of some one of the grounds for an attachment enumerated in Section 851 of this Subchapter.

(b) The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

(c) The defendant has been served with a notice, issued by the Clerk, which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the Court Clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

(d) If no written objection is filed within the five-day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five-day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the Clerk, the Plaintiff has executed an undertaking pursuant to Section 853 of this Title. The Nation and its agents shall not be required to execute an undertaking.

(e) If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his claim and the truth of the matters asserted in his application, the Court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated as provided in this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 853. Attachment Bonds**

The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff's claim, as the Court shall direct, and shall guarantee payment of all damages, costs, and reasonable attorney fees incurred as a result of a wrongful attachment. No bond shall be required of the Nation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 854. Order of Attachment**

The order of attachment shall be directed and delivered to the Chief of the Seminole Nation Lighthorse Police Department. It shall require him to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the Nation not exempt by law from being applied to the payment of the plaintiff's claims, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable cost of the action not exceeding One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 855. When Returnable**

The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons, and otherwise within twenty (20) days of the date of issuance.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 856. Order of Execution**

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the Chief of the Seminole Nation Lighthorse Police Department.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 857. Execution of Attachment Order**

The order of attachment shall be executed by the Chief of the Seminole Nation Lighthorse Police Department without delay. He shall go to the place within the Nation where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff; and the officer shall make a true inventory and appraisal of all the property attach, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 858. Service of Order**

When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. Where it is personal property, and he can get possession, he shall take such into his custody, and hold it subject to the order of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 859. Re-delivery on Bond**

The Chief of the Seminole Nation Lighthorse Police Department shall re-deliver the property to the person in whose possession it was found, upon the execution by such person, in the presence of the Chief of the Seminole Nation Lighthorse Police Department, an undertaking to the plaintiff, with one or more sufficient sureties, to the effect that the parties to the same are bound in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the Court in the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 860. RESERVED**

## **SUBCHAPTER D GARNISHMENT**

### **Section 861. Limited Garnishment**

The purpose of this Ordinance is to establish a systematic and uniform procedure for garnishments pursuant to orders of the Seminole Nation District Court in a fair, equitable and fiscally responsible manner.

This Ordinance shall also establish a systematic and uniform procedure for garnishment of wages of employees of the Seminole Nation or an employee of a tribal entity pursuant to orders of the Seminole Nation District Court arising out of original proceedings in such court and pursuant to wage levies issued by the Oklahoma Employment Security Commission (for which no order of the Seminole Nation District Court shall be required) so long as the Tribe continues to participate in Oklahoma's unemployment compensation system. This Ordinance is not intended to prohibit judgment debtors and judgment creditors from reaching alternative agreements/settlements of their claims.

This Ordinance is not intended to alter or diminish the rights of the Seminole Nation to collect debts owed to the Seminole Nation or its entities pursuant to any other law of the Seminole Nation.

Collection under this act is limited to the following:

- (a) All debts collected under this act shall be collected where the Seminole Nation or Seminole entities are the Employer regardless of Native/Non-Native status; or
- (b) All debts rendered to judgment where debtor is not employed by the Seminole Nation or Seminole entities will require domestication in a court of competent jurisdiction where the debtor is employed; and
- (c) A debt under this act must be for debts owed to the Seminole Nation or Seminole entities; or debts originating out of a federal court order; debts originating out of overpayment of unemployment benefits by the Oklahoma Unemployment Security Commission (OESC); or child support order from any jurisdiction when domesticated; or the IRS; or federal student loans; and
- (d) This Act does not apply to any private debt unless the creditor is the Seminole Nation or a Seminole Entity, or there is a valid child support order; or federal court order.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012; amended by TO-2015-08, Sept. 9, 2015.]

### **Section 862. Definitions**

- (a) "Council" means the Seminole Nation General Council as established by the Seminole Nation Tribal Constitution and Bylaws.
- (b) "Creditor" means a person or entity to which a debt is owed by another person who is the debtor.

(c) “Debt” means a sum of money due by certain and express agreement, including a specified sum of money owing to one person from another, including not only obligations of a debtor to pay, but a right of a creditor to enforce and receive such payment.

(d) “Debtor” means a person who owes a debt to another and may be compelled to pay a claim or demand by a creditor.

(e) “Disposable Wages” means that part of the wages of an individual left after deduction of federal tax withholding, and any other amounts required by applicable law to be withheld by the employer.

(f) “Employee” means a person employed by or in the service of the Seminole Nation or one of its subordinate entities or agencies or under any contract of hire, express or implied, oral or written, where the Seminole Nation has the power or right to control and direct such individual in return for whom such individual receives a salary or wages. For purposes of this Ordinance, “employee” shall not include elected officials, Council members, commission members, board members, task force members, and committee members.

(g) “Employer” means the Seminole Nation or one of its subordinate entities or agencies. It shall not include businesses that are incorporated or organized or domesticated or foreign qualified under Seminole Title 4A, unless wholly owned and operated by the Seminole Nation or one of its entities or agencies.

(h) “Foreign Judgments” means a judgment for (1) orders of any U.S. Federal Court; (2) federal taxes; (3) federal student loans; or (4) child support orders of this Court or child support orders where rendered by any other state, federally-recognized Tribe, or the United States or federal court which is politically and judicially distinct from the Seminole Nation District Court.

(i) “Garnishment” shall mean the method to obtain satisfaction of a judgment by reaching the unpaid past or future wages of an employee of the Seminole Nation or an employee of a tribal entity. Garnishment shall not include voluntary wage assignments by employees of the Seminole Nation.

(j) “HR Department” means the Human Resources Department for the Seminole Nation and/or the respective Human Resources Department for the various Tribal Entities.

(k) “Judgment Creditor” means a person in whose favor a money judgment has been entered by a Court of law and who has not yet been paid.

(l) “Judgment Debtor” means a person against whom judgment has been recovered, and which remains unsatisfied.

(m) “OESC” means the Oklahoma Employment Security Commission.



(n) “Proper Notice of Levy” means a Notice of Levy made on the Seminole Nation or one of the Tribal Entities after a debtor has been notified by the OESC of the amount due on overpayment of unemployment compensation benefits and demand for payment has been made. A Notice of Levy will not be considered “proper” if the Seminole Nation has reason to believe that the OESC has not followed all applicable Oklahoma laws regarding levies for overpayment of unemployment compensation benefits, or if the Seminole Nation has reason to believe that the alleged overpayment is not actually owed by the employee to the OESC.

(o) “Tribal Entity” means the Seminole Nation itself, its departments, programs, agencies, entities, enterprises, and subdivisions operating under a governing document established pursuant to authority contained in the Seminole Nation Constitution or Code of Laws. It shall not include businesses that are incorporated or organized or domesticated or foreign qualified under Seminole Title 4A, unless wholly owned and operated by the Seminole Nation or one of its entities or agencies.

(p) “Wages” means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or otherwise. For purposes of this Ordinance, “otherwise” does not include stipends.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012; amended by TO-2015-08, Sept. 9, 2015.]

### **Section 863. Recognition and Enforcement**

(a) This Ordinance applies to a foreign judgments for child support, federal taxes, federal student loans, or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Seminole Nation District Court against an employee of the Seminole Nation or employee of a tribal entity that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

(b) A foreign judgment for child support, federal taxes, federal student loans or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Seminole Nation District Court against an employee of the Seminole Nation or an employee of a tribal entity meeting the requirements of Section 865 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

(c) Subject to Section 865, the Seminole Nation District Court shall recognize, implement and enforce the orders, judgments and decrees of foreign courts for (1) child support, (2) federal taxes, (3) federal student loans; or (4) orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Seminole Nation District Court against an employee of the Seminole Nation or an employee of a tribal entity unless the Seminole Nation District Court finds the foreign court that rendered the order, judgment or decree:

- (1) Lacked jurisdiction over a party or the subject matter;
- (2) Denied due process as provided by the Indian Civil Rights Act of 1968; or
- (3) Does not reciprocate for recognition and implementation of orders, judgments, and decrees of the Seminole Nation District Court.

(d) A foreign judgment for child support, federal taxes, federal student loans, or orders of any U.S. Federal Court shall not be recognized where:

- (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have jurisdiction over the subject matter; or
- (3) The foreign court did not have personal jurisdiction over the defendant.

(e) A foreign judgment for child support, federal taxes, federal student loans, or orders of a U.S. Federal Court need not be recognized if

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
- (2) The judgment was obtained by extrinsic fraud;
- (3) The cause of action or defense on which the judgment is based is repugnant to the public policy of the Seminole Nation;
- (4) The proceeding of the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
- (5) The judgment conflicts with another final and conclusive judgment; or
- (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012; amended by TO-2015-08, Sept. 9, 2015.]

#### **Section 864. Original Actions in the Seminole Nation District Court**

(a) A creditor may seek appropriate relief in the Seminole Nation District Court for child support, federal taxes, federal student loans or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Seminole Nation District Court against a debtor pursuant to the rules of the Seminole Nation District Court or as otherwise

provided in the Seminole Nation Code of Laws.

(b) The Seminole Nation, its entities and agencies may be a creditor and seek garnishment against any enrolled Seminole or enrolled Native American who is employed by the Seminole Nation or one of its entities or agencies.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

#### **Section 865. Personal Jurisdiction**

The foreign judgment child support, federal taxes, federal student loans, or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Seminole Nation District Court against an employee of the Seminole Nation or an employee of the Seminole Nation or an employee of a tribal entity shall not be refused recognition for lack of personal jurisdiction if:

- (a) The defendant was served personally in the foreign state or Tribe;
- (b) The defendant personally appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him; or
- (c) The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

#### **Section 866. Notice**

The judgment creditor shall afford notice of the action in the Seminole Nation District Court to the judgment debtor and shall also request a hearing pursuant to the rules of the Seminole Nation District Court at which the debtor will be given the opportunity to be heard regarding recognition of the foreign court order, judgment or decree.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

#### **Section 867. Garnishment of Wages**

(a) In a civil action for garnishment filed by a judgment creditor, the Court may order garnishment of unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed in the Seminole Nation District Court unless the judgment remains unsatisfied sixty (60) days after such judgment was entered. In an action for garnishment,

the judgment debtor shall be named as a defendant. In no case shall the Seminole Nation, tribal entity, General Council, or officials of the Seminole Nation be named as Defendants, unless such individual is subject to a private debt as the debtor or judgment debtor.

(b) The maximum amount of wages subject to garnishment in any one pay period shall be twenty percent (20%) of the judgment debtor's disposable wages for one pay period except for child support and OESC levies. The Judge of the District Court shall have discretion in setting the percentage of garnishment up to and including twenty percent (20%).

(c) In the event a judgment debtor is subject to multiple garnishments during the same pay period, one of which is for child support, the maximum amount of wages subject to garnishment in any one pay period shall be the maximum amount allowable for the non-child support garnishment plus the amount allowable for child support garnishments.

(d) A garnishment order recognized by and/or rendered by the Seminole Nation District Court against an employee of the Seminole Nation or an employee of a tribal entity shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his employment with the Seminole Nation or tribal entity provided that if the judgment debtor is rehired by the Seminole Nation or tribal entity within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

(e) No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

(f) No order for garnishment shall be effective until it is served on the HR Department for the entity which employs the debtor. A garnishment order served on the HR Department shall have priority over any subsequent garnishment order served on the HR Department during the period it is in effect, except that garnishments for child support shall have priority over any prior or subsequent garnishments of the same wages.

(g) Within seven (7) days after the end of each pay period, the HR Department shall file an answer with the Seminole Nation District Court Clerk (or in the case of an OESC levy, with the OESC) and pay the amount withheld to the judgment creditor's attorney (or in the case of an OESC levy, to the OESC) or to the judgment creditor if there is no attorney. The answer shall state:

- (1) Whether the entity on which the order or levy was served was the employer of the defendant named in the notice, was indebted to the defendant, or was under any liability to the defendant in any manner for earnings, specifying the beginning and ending dates of the pay period existing at the time of the service of the order or levy, the total amounts earned in the entire pay period, and all the facts and circumstances necessary to a complete understanding of any indebtedness or liability.
- (2) If the HR Department claims any setoff, defense or other claim to the wages, the HR Department shall include this information in the answer;

- (3) At the HR Department's option, it may include information regarding any claim of exemption from execution on the part of the defendant or other objection known to the HR Department against the right of the judgment creditor or OESC;
- (4) If a garnishment order or OESC levy is served on an HR Department while a previous non-child support garnishment order is still in effect, the HR Department shall answer the subsequent garnishment order or OESC levy by stating that the HR Department is presently holding defendant's property under a previous garnishment order or OESC levy and by giving the date on which all previous garnishment orders/OESC levies are expected to end.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012; amended by TO-2015-08, Sept. 9, 2015.]

#### **Section 868. Administrative Processing Fee**

The Seminole Nation or tribal entity employer shall have the right to assess a \$2.00 processing fee upon the judgment debtor for each pay period of garnishment of wages of an employee of the Seminole Nation or tribal entity.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

#### **Section 869. Specific Orders With Exemptions From Certain Requirements**

(a) All child support orders rendered against an employee of the Seminole Nation or employee of a tribal entity issued by foreign court under laws of the United States or any State or any federally-recognized Tribe in which the foreign court is situated are enforceable under this Code and are exempt from Section 867, subsections (a) and (b) and maximum amount of wages subject to garnishment in any one pay period shall be twenty-five percent (25%) of the judgment debtor's disposable wages for one pay period. The Judge of the District Court shall have discretion in setting the percentage of garnishment up to and including twenty-five percent (25%).

(b) Any proper Notice of Levy accompanied by a warrant of levy and lien issued by the OESC against an employee of the Seminole Nation or employee of a tribal entity is enforceable under this Code without the need for an order of Seminole Nation District Court and is exempt from Sections 866 and 867 (a) and (b). The maximum amount of wages subject to garnishment in any one pay period pursuant to a proper Notice of Levy issued by the OESC shall be twenty-five percent (25%) of the judgment debtor's disposable wages for any one pay period. This section is intended to be permissive rather than mandatory.

Should the HR Department determine that it believes a Notice of Levy is not proper, the HR Department must notify the Attorney General within 3 days. The Attorney General will evaluate

the HR Department's rationale and will work with the HR Department to develop an appropriate answer to be filed on or before the 7-day deadline, or will work with the OESC to get an extension of time to respond.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012; amended by TO-2015-08, Sept. 9, 2015.]

#### **Section 870. Savings Clause**

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

#### **Section 871. Stay on Appeal**

If the judgment debtor satisfies the court either that an appeal is pending or that he or she is entitled to and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the judgment debtor to prosecute the appeal.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

#### **Section 872. No Waiver of Sovereign Immunity**

Nothing in this Ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Seminole Nation or its entities or agencies or officials from unconsented suit in State, Federal, or Tribal Court against the Seminole Nation, any Tribal entity, or any official acting in his or her official capacity.

[HISTORY: Enacted by TO 92-8, July 27, 1992, amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; amended by TO 2012-02, June 2, 2012.]

**SUBCHAPTER E**  
**PROVISIONS RELATING TO ATTACHMENT AND GARNISHMENT**

**Section 873. RESERVED**

**Section 874. RESERVED**

**Section 875. RESERVED**

**Section 876. RESERVED**

**Section 877. RESERVED**

**Section 878. RESERVED**

**Section 879. RESERVED**

**Section 880. RESERVED**

**Section 881. RESERVED**

**Section 882. RESERVED**

**Section 883. RESERVED**

**Section 884. RESERVED**

**Section 885. RESERVED**

**Section 886. RESERVED**

**Section 887. RESERVED**

**Section 888. RESERVED**

**Section 889. RESERVED**

**Section 890. RESERVED**

## **SUBCHAPTER F RECEIVERS**

### **Section 891. Appointment of Receiver**

A receiver may be appointed by the Supreme Court, the District Court, or any Judge of either:

(a) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or other jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceed thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

(b) In an action by a mortgagee for the foreclosure of his mortgage and sale for the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

(c) After judgment, to carry the judgment in effect.

(d) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

(e) In the cases provided in this Title, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(f) In all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.1 to 891 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 892. Persons Ineligible**

No party, or attorney, or person so interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.2 to 892 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



### **Section 893. Oath and Bond**

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court therein.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.3 to 893 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 894. Powers of Receiver**

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such act respecting the property as the Court may authorize.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.4 to 894 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 895. Investment of Funds**

Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order shall be made, except upon the consent of all the parties to the action, or except by order of the Court when the principal and interest earned thereon are guaranteed by the federal government and may be withdrawn within a reasonable time.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.5 to 895 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 896. Disposition of Property Litigated**

(a) When it is admitted, by the pleadings or on oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery, which, is held by him as trustee for a party, or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without security, subject to the further discretion of the Court.

(b) Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.

(c) Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into Court under this Section, and ordering said person to deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed from the action.

(d) In cases where judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money or property paid into Court under this Section, but the Court Clerk shall act as receiver as an aid to the enforcement of a judgment, and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.6 to 896 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 897. Punishment for Disobedience of Court**

Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the Chief of the Seminole Nation Lighthorse Police Department to take the money, or thing, and deposit or deliver it, in conformity with the direction of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.7 to 897 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 898. Vacation of Appointment by Supreme Court**

In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a Justice thereof, conditioned for the due prosecution of such case, and the payment of all costs and damages that may accrue to the Nation, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 892.8 to 898 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER G EMINENT DOMAIN**

### **Section 899. Who May Exercise Authority**

The General Council, and any officer or agency of the Nation specifically authorized to do so by Statute may obtain real or personal property by eminent domain proceedings in conformance with the Constitution, the Indian Civil Rights Act, and this Subchapter.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.1 to 899 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 8100. What Property May Be Condemned by Eminent Domain**

Except property made exempt from eminent domain by the Constitution and other applicable law, all property real and personal within the Nation, not owned by the Nation and its agencies, shall be subject to eminent domain except title to property held in trust by the United States for an Indian or another Indian Tribe, or property held by an Indian or another Indian Tribe subject to a restriction against alienation imposed by the United States unless the United States has consented to the eminent domain of said property. Any lease or tribally granted assignment, or other non-trust right to use such trust or restricted property conveyed by Tribal or federal law shall be subject to eminent domain in conformance with the Constitution and Statutes and the Indian Civil Rights Act.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.2 to 8100 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 8101. Condemnation of Property**

(a)     Applicability of Other Rules. Except as otherwise provided in this Subchapter, this Title shall govern the procedure for the condemnation of real and personal property under the power of eminent domain.

(b)     Joinder of Properties. The plaintiff may join the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c)     Amount to be Paid. The owner shall be entitled to receive just compensation for all property or rights to property taken from him in eminent domain proceedings.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.3 to 8101 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 8102. Complaint**

(a) Caption. The complaint shall contain a caption as provided in Section 110(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendant only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendant all person having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All other may be made defendants under the designation "Unknown Owners." Process shall be served as provided in Section 8103 of this Subchapter upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in Section 8104 of this Subchapter. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(c) Filing. In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.4 to 8102 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 8103. Process in Eminent Domain**

(a) Notice; Delivery. Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons.

(b) Same; Form. Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's

attorney and an address where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(c) Service of Notice.

- (1) Personal Service. Personal service of the notice shall be made in accordance with the rules for personal service of summons upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.
- (2) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served, because after diligent inquiry his place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Section but whose place of residence is then known. Unknown owners may be served by publication in a like manner by a notice addressed to "Unknown Owners."
- (3) When Publication Service Complete. Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(d) Return; Amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.5 to 8103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 8104. Appearance or Answer**

If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his property, he shall serve his answer within twenty (20) days after the service of

notice upon him, the answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objection not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.6 to 8104 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 8105. Amendment of Pleadings**

Without leave of Court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 8107 of this subchapter. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Section 225(b) of this Title, upon any party affected thereby who has appeared and, in the manner provided in Section 8107 of this subchapter, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the Court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by Section 8104 of this subchapter, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as there provided.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.7 to 8105 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 8106. Substitution of Parties**

If a defendant dies or becomes incompetent or transfers his interest after his joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 8103(c).

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.8 to 8106 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 8107. Dismissal of Action**

(a) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in the property or take possession thereof, the plaintiff may dismiss the action as to that property, without an

order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) By Stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the Court may vacate any judgment the has been entered.

(c) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, without awarding just compensation of the possession, title or lesser interest so taken, or, if the possession, title, or interest in such property is to be returned to the defendant upon dismissal by motion of the plaintiff, the Court may also award reasonable actual damages incurred, not to exceed One Thousand Dollars (\$1,000.00) in excess of fair rental value of the premises during the period in which the plaintiff held possession or title against the plaintiff notwithstanding the doctrine of sovereign immunity. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) Effect. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.9 to 8107 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 8108. Deposit and Its Distribution**

The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the Court shall enter judgment against him and in favor of the plaintiff for the overpayment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.10 to 8108 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



**Section 8109. Costs**

Costs shall normally be paid by the plaintiff in condemnation actions unless the court, in its discretion determines that a defendant should pay their own costs, which may include a reasonable portion of plaintiff's costs because of inequitable conduct or other statutory reason.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 893.11 to 8109 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER NINE JUDGMENT**

### **Section 901. Judgments – Costs**

(a) Definition; Form. “Judgment” as used in this Title includes a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there are no just reasons for delay and upon an express direction of the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims, or rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revisions at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment; Default. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs. Except when express provisions therefor is made either in a statute of the Nation or in this Title, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs; but costs, including attorney fees and statutory authorization for collection of damages or requirement for bonds or undertakings, against the Nation, its officers, and agencies shall be imposed only to the extent specifically permitted by applicable law. A general statement in this Title that such are payable by a party or by the plaintiff or defendant is not authority to impose such costs, damages, or requirements upon the Nation, its officers and agencies. Costs may be taxed by the clerk on one (1) days’ notice. On motion served within ten (10) days thereafter, the action of the clerk may be reviewed by the Court.

(e) Applied to Probate Proceedings. A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the District Court in the distribution of decedent’s estates.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 902. Default**

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by this Title and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

- (1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can, by computation, be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not a child or incompetent person.
- (2) By the Court. In all other cases the party entitled to a judgment by default shall supply to the Court therefor; but no judgment by default shall be entered against a child or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the Court to enter or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right, of trial by jury to the parties when and as required by any statute of the Nation.

(c) Setting Aside Default. For good cause shown the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Section 909(b).

(d) Plaintiff, Counterclaimants, Cross-Claimants. The provisions of this Section apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Section 901(c).

(e) Judgment against the Nation. No judgment by default may be entered against the Nation, its officers, or agencies unless sixty (60) days written notice has been served upon the Principal Chief and the General Council. If during such sixty (60) days period the Nation is without counsel, no default may be entered until thirty (30) days after approval of the contract. During such period, the Nation, its agencies, or officers shall be allowed to cure any default. No judgment by default shall be entered against the Nation, its agencies, or officers in any case unless the claimant established his claim or right to relief, including his authority to bring the suit, and his damages by evidence satisfactory to the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 903. Offer of Judgment**

At any time more than ten (10) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability, or both, remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 904. Judgment for Specific Act – Vesting Title**

If a judgment directs a party to execute a conveyance of land, to deliver a deed or other documents, or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or person property is within the Nation, and the interest in said property at issue in the action is not held in trust by the United States as Indian lands, the Court in lieu of directing a conveyance of that interest may enter a judgment divesting the interest from any party and vesting it in others and such judgment has the effect of a conveyance executed in due, form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 905. Summary Judgment**

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any party thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without support affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be entered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this Section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary Section 907 judgment is made and supported as provided in this Section, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may, refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 906. Declaratory Judgments**

The procedure for obtaining a declaratory judgment in action arising in equity, or through contract, or pursuant to any specific law authorizing a declaratory judgment, shall be in accordance with this Title, and in the manner provided in Sections 703 and 704. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 907. Entry of Judgment**

(a) Subject to the provisions of Section 901(b), the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it:

- (1) upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court.
- (2) upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories.

(b) Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered in the civil docket book. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 908. New Trials – Amendments of Judgments**

(a) Grounds. A new trial is a re-examination in the same Court, of an issue of fact, or of law, or both and may be granted to all or any of the parties and on all or part of the issues for any of the following reasons:

- (1) Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the Court or referee, or abuse of discretion, by which the party was prevented from having a fair trial, or
- (2) Misconduct of the jury or prevailing party, or
- (3) Accident or surprise, which ordinary prudence could not have guarded against, or
- (4) Excessive or inadequate damages
- (5) Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property, or
- (6) That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law, or
- (7) Newly-discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial, or
- (8) Error of law occurring at the trial, and objected to by the party making the application, or
- (9) When, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

On a motion for a new trial in an action tried without a jury, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment, except that a motion based upon newly discovered evidence shall be made within one (1) year from the date of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the Court for good cause shown or by the parties by written stipulation. The Court may permit reply affidavits.

(d) On Initiative of Court. Not later than ten (10) days after entry of judgment the Court, of its own initiative, may order a new trial for any reasons for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 909. Relief from Judgment or Order**

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Section 908(b); (3) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one (1) year after the judgment, order, or proceeding was entered or taken. A motion under this subsection (b) does not affect the finality of a judgment or suspend its operation, this Section does not limit the power of Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified of the proceedings, or to set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this Title or by an independent action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 910. Harmless Error**

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a



judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 911. Stay of Proceedings to Enforce a Judgment**

(a) Automatic Stay; Exceptions-Injunctions, Receiverships, and Patent Accountings. Except as stated in this Title, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (c) of this Section govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the deposition of a motion for a new trial or to alter or amend a judgment made pursuant to Section 908, or of a motion or relief from a judgment or order made pursuant to Section 909, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Section 757, or of a motion for amendment to the findings or for additional findings made pursuant to Section 751(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subsection (a) of this Section. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the Court.

(e) Stay in Favor of the Nation or Agency Thereof. When an appeal is taken by the Nation or an officer or agency thereof or by direction of any department of the Nation, the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Power of the Supreme Court Not Limited. The provisions in this Section do not limit any power of the Supreme Court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(g) Stay of Judgment as to Multiple Claims or Multiple Parties. When the Court has

ordered a final judgment under the conditions stated in Section 901(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 912. Disability of a Judge**

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under this Title after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 913. RESERVED**

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 914. Judgment Against Child**

It shall not be necessary to reserve in a judgment or order the right of a child to show cause against it after his attaining full age; but in any case in which such reservation would be proper, the child, within two (2) years after arriving at the age of eighteen (18) years, may show cause against such order of judgment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 915. Judgments as Liens**

Judgments of the District Court and the Courts of the United States shall be liens on real estate of the judgment debtor within the Nation from and after the time a certified copy of such judgment has been filed in the Court Clerk's land tract records book. A fee of Five Dollars (\$5.00) shall be collected for each requested filing in the land tract records book. No judgment whether rendered by the District Court or a Court of the United States shall be a lien on the real estate of a judgment debtor until it has been filed in this manner. Execution shall be issued only by the District Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 916. Discharge of Money Judgment Liens**

In the event of an appeal to the Supreme Court from a money judgment, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was rendered, shall cease upon the judgment debtor or debtor's depositing, with the Court Clerk of the District Court, cash sufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, accompanied by a written statement, executed by the judgment debtor or debtors, that such deposit is made to discharge the lien of such judgment and any lien by virtue of an attachment issued and levied in the action, as provided for herein. It shall be the duty of the Court Clerk, upon receipt of such a cash deposit and written statement, immediately to enter the same and the amount of case received upon the civil appearance docket in the action, upon the judgment docket opposite the entry of such judgment, and upon the land tract records book if the judgment has been filed therein. It shall further be the duty of the Court Clerk to deposit the case so received in any action in a separate interest bearing official depository account and to hold the same pending final determination of the action, and, upon final determination of the action, to pay, or apply the same upon any judgment that might be rendered against the depositor or depositors, and to refund any balance in excess of any such judgment to the depositor or depositors, or, in the event the action be finally be determined in favor of the depositor or depositors, to refund the whole amount thereof to the depositor or depositors.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 917. Additional Case Deposits**

A judgment creditor may, at any time, upon reasonable notice to the judgment debtor or debtors, move the court for the deposit of additional cash; and if it appears that the case which has been deposited is insufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, which time shall be set by the Court, the judgment shall be revived and attachment may be issued thereon.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 918. Reversal by Supreme Court**

In the event of a reversal of the judgment by the Supreme Court, no money deposited to discharge the lien of such judgment shall be refunded by the Court Clerk until final disposition of the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 919. Interest on Money Judgments**

All money judgments of the District Court shall bear interest at the rate of ten percent (10%) simple interest per annum, except authorized judgments against the Nation, its political subdivisions, and agents in their official capacity which judgments shall not bear interest unless such is specifically provided for, provided that when a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by law, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 920. Exempt Property**

The following property shall be exempt, except as to enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale, and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the District Court;

(a) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater, except as may be specifically provided by law for child support payments.

(b) One automobile of fair market value not exceeding One Thousand Dollars (\$1,000.00).

(c) Tools, equipment, utensils, or book necessary to the conduct of the person business but not including stock or inventory.

(d) Actual trust or restricted title to any lands held in trust by the United States, or subject to restrictions against alienation imposed by the United States, or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

(e) Any dwelling used as the actual residence of the judgment debtor, including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the judgment debtor.

(f) Household goods, furniture, wearing apparel, personal effects, but not including televisions, radios, phonographs, tape records, home computers, (no otherwise exempt) more than two (2) firearms, works of art, and other recreational or luxury items.

(g) One horse, one bridle, and one saddle.

(h) All implements of husbandry used upon the homestead, not more than four cows with their immature offspring, two hogs with their immature offspring, ten chickens, and feed suitable and sufficient to maintain said livestock and fowls for a period of one (1) year.

- (i) All ceremonial or religious items.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 920.1. Payment of Judgments from Individual Indian Moneys**

Whenever the District Court shall have ordered payment of money damages to an injured party and the debtor refuses or neglects to make such payment within the time set for payment by the Court, or when an execution is returned showing no property found, and when the debtor has sufficient funds to his credit at any Bureau of Indian Affairs Agency Office to pay all or part of such judgment, the Clerk of the District Court, upon request of the judgment creditor, shall certify the record to the superintendent of the agency, who shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the judgment creditor the amount of the judgment, or such lesser amount as may be specified by the Secretary from the account of the judgment debtor.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **SUBCHAPTER A FOREIGN JUDGMENTS**

### **Section 921. Definition**

In this Title “foreign judgment” means any judgment, decree, or order of a Court of the United States, any other Indian tribe, or of any other Court which is entitled to comity or full faith and credit in the District Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 922. Filing and Status of Foreign Judgments**

A copy of any foreign judgment authenticated in accordance with the applicable act of Congress or of the statutes of the Tribe may be filed in the office of the Court Clerk. The clerk shall treat the foreign judgment in the same manner as a judgment of the District Court. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the District Court and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until a certified copy of the judgment so filed is also filed in the office of the Court Clerk as provided by law in the land track record book.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 923. Grounds for Non-Recognition**

- (a) A foreign judgment is not conclusive if
  - (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
  - (2) The foreign court did not have personal jurisdiction over the defendant; or
  - (3) The foreign court did not have jurisdiction over the subject matter.
- (b) A foreign judgment need not be recognized if
  - (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
  - (2) The judgment was obtained by fraud;
  - (3) The cause of action on which the judgment is based is repugnant to the public policy of the Tribe;

- (4) The judgment conflict with another final and conclusive judgment;
- (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
- (6) In the case of jurisdiction based only on personal service, the foreign court was seriously inconvenient forum for the trial of action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 924. Notice of Filing**

(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the Court an affidavit setting forth the name and last known post office address of the judgment debtor, and of the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 925. Stay of Execution of Foreign Judgment**

(a) If the judgment debtor shows the District Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, or until the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the law of the jurisdiction in which it was rendered.

(b) If the judgment debtor shows the District Court any ground upon which enforcement of a judgment of the District Court would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in the Nation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 926. Fees**

Any person filing a foreign judgment shall pay to the Court Clerk those fees now and hereafter prescribed by the statute or by authorized Court rule for the filing of an action in the Court. Fees for docketing, transcription, or other enforcement proceedings shall be the same as provided for judgments of the District Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 927. Optional Procedure**

The right of a judgment creditor to bring an action to enforce his judgment instead of proceedings under this subchapter remains unimpaired.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 928. RESERVED**

**Section 929. RESERVED**

**Section 930. RESERVED**



## **SUBCHAPTER B**

### **EXECUTION**

#### **Section 931. Executions – Defined**

Executions shall be deemed process of the Court, and shall be issued by the clerk, and directed to the Chief of the Seminole Nation Lighthorse Police Department.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 932. Kinds of Execution**

Executions are of three kinds:

- (a) Against the property of the judgment debtor.
- (b) For the delivery of possession of real or personal property, with damages for withholding the same, and costs.
- (c) Executions in special cases.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 933. Property Subject to Levy**

Lands, tenements, goods and chattels not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold, as hereinafter provided.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 934. Property Bound After Seizure**

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 935. Execution Must Be Issued within Five Years**

If execution is not issued and filed as provided by subchapter within five (5) years after the date of any judgment that now is or may hereafter be rendered, in the District Court or if five (5) years have intervened between the date that the last execution on such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the

judgment debtor. Provided, that this section shall not apply to judgments in favor of the Nation its subdivisions or agents.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 936. Priority among Property**

The writ of execution against the property of the judgment debtor, issuing from the District Court shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same non-trust interest in lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the executions.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 937. Priority Among Executions**

When two or more writs of execution against the same debtor shall be sued Out and when two or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale or this property, no preference shall be given to either of such writs but if a sufficient sum of money be not made to satisfy all such executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands, provided that nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the property of the judgment debtor.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 938. Levy by Priority**

The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution, “no goods”, and forthwith levy the writ of execution upon any interest in the lands and tenements of the debtor, which may be liable to satisfy the judgment; and if any of the interests in such lands and tenements of the debtor which may be liable shall be encumbered by mortgage or any other lien or liens, such lands and tenements may be levied upon and appraised and sold, subject to such lien or liens, which shall be stated in the appraisalment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 939. Who Makes Levy**

It shall be unlawful for anyone to levy an attachment or execution within the Nation who is not a bonded Seminole Nation Lighthorse Police Officer or Federal Police officer.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 940. When Levy Void**

Any attachment or execution issued to, or levied by anyone other than a bonded Seminole Nation Lighthorse Police Officer or Federal Police officer shall be void and of no effect and the Court Clerk or other person issuing same, or officer or other person levying same, as the case may be, together with their bondsmen shall be liable for any damage caused thereby.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 941. Penalty for Unlawful Levy**

Anyone violating the provisions of Section 939 of this Title shall be punished by a fine not to exceed One Hundred Dollars (\$100.00) or confinement in a Detention Facility not to exceed thirty (30) days or both.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 942. Levy on Property Claimed by Third Person**

If the officer, by virtue of an execution issued from the District Court, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to give him an undertaking, with good and sufficient securities to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking shall be given, the officer may refuse to proceed as against such property.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 943. Re-Delivery to Defendant**

In all cases where the Chief of the Seminole Nation Lighthorse Police or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security, in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice, given in writing, to said defendant in execution, or by advertisement published in a legal newspaper, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him, given, or to pay to the officer holding the execution the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, may be proceeded on as in other cases.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 944. Notice of Sale of Chattels**

The officer who levies upon goods and chattels, but virtue of an execution issued by the District Court, before he proceeds to sell the same shall cause public notice to be given of the time and place of sale, for at least ten (10) days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed, or, in case no legal newspaper be published, by setting up advertisements in five public places in the reservation. Two advertisements shall be put up in the township where the sale is to be held; and where goods and chattel levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution true and perfect inventory of such goods and chattels, and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 945. Further Levy When Property Taken Insufficient**

When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 946. Filing and Indexing of Execution**

(a) When a general execution is issued and placed in the custody of the Chief of the Seminole Nation Lighthouse Police for levy, a certified copy of such execution shall be filed in the office of the Court Clerk and shall be indexed the same as judgments.

(b) If a general or special execution is levied upon an interest lands and tenements, the Chief of the Seminole Nation Lighthouse Police shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property so levied on, upon actual view; and such disinterested persons shall return to the officer their signed estimate of the real value of said property.

(c) To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of a general execution thereon shall be filed and indexed in the same manner as judgments in the office of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 947. Waiver of Appraisement**

It is against the public policy of the Nation to allow enforcement of execution upon realty without appraisal, and if the words “appraisement waived” or other words of similar import, shall be inserted in any deed, mortgages, bonds, notes, bill or written contract, they shall be of no effect whatsoever and an appraisal shall be ordered notwithstanding any contract to the contrary.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 948. Return of Appraisement**

The officer receiving such return of appraisement pursuant to Section 946(b) of this Title shall forthwith deposit a copy thereof with the Clerk of the Court and advertise and sell such property, agreeably to the provisions of this Title.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 949. When Lien Restricted**

If, upon such return, as aforesaid, it appears, by the inquisition, that two thirds of the appraised value of said non-trust interest in lands and tenements, so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued shall not operate as a lien on the residue of the debtor’s estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than two-thirds of the value returned in the inquest; and nothing in this section contained shall, in any wise, extend to affect the sale of lands by the Nation but all lands, the corporation or association indebted to the Nation for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes, agreeably to any laws in such cases made and provided.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 950. Notice of Sale of Realty**

Any non-trust interest in lands and tenements taken on execution shall not be sold until the officer causes public notice of the time and place of sale to be given by publication for two (2) successive weeks in a legal newspaper and by putting up an advertisement upon the Court house door or other public bulletin board within a common area of the Court house and in five (5) other public places in the reservation, two (2) of which shall be in the township where such lands and tenements lie. Such sale shall not be held less than thirty (30) days after the date of the first publication of the notice herein required. All sales made without such advertisement shall be set aside on motion by the Court to which the execution is returnable.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June

5, 2010; approved by BIA February 2, 2012.]

**Section 951. Confirmation of Sale**

If the Court, upon the return of any writ of execution, for the satisfaction of which any lands or tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity with the provisions of this Title, the Court shall direct the clerk to make an entry on the journal that the Court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such interest in lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the clerk of the Court where same shall remain until the Court shall have examined his proceedings as aforesaid, when said clerk of the Court shall pay the same of the person entitled thereto, agreeably to the order of the Court.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 952. Police Chief's Deed**

The Chief of the Seminole Nation Lighthorse Police Department or other officer who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchase as good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, to be made by the Chief of the Seminole Nation Lighthorse Police Department or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, but virtue whereof the said lands and tenements were sold as aforesaid, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of such interests in real estate in other cases.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 953. Advance of Printer's Fees**

The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 954. Demand for Printing Fees**

Before any officer shall be excused from giving the notification mentioned in Section 952, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, the fees in said section specified.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 955. Place of Sale**

All sales of interests in land or tenements under execution shall be held at the District Court house unless some other place within the reservation is designated by the judge having jurisdiction in the case. No Seminole Nation Lighthorseman or other officer making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 956. Other Executions of Realty Not Sold**

If lands or tenements, levied on as aforesaid, are not sold upon one execution, other executions may be issued to sell the property so levied upon.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 957. Levy on Realty Under Several Executions**

In all cases where two or more executions shall be put into the hands of the Seminole Nation Lighthorseman or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors, in whose favor one or more of said executions are issued, shall require the Seminole Nation Lighthorseman or other officer to levy said executions, or so many thereof as may be required, on separate parcels of the real property of the judgment debtor or debtors, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable thereon, as near as may be according to the appraised value of each separate parcel of said real property.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 958. Deed by Successor of Officer Making Sale**

If the term of service of the Chief of the Seminole Nation Lighthorse Police or other officer who has made, or shall hereafter make sale of any non-trust interest in lands and tenements, shall expire, or if the Chief of the Seminole Nation Lighthorse Police or other officer shall be absent, or be rendered unable by death or otherwise, to make a deed of conveyance of the same, any succeeding Chief of the Seminole Nation Lighthorse Police or other officer or the law enforcement officer acting on his behalf, on receiving a certificate from the Court from which the execution issued for the sale of said non-trust interest in lands and tenements, signed by the clerk, by order of said Court, setting forth that sufficient proof has been made to the Court that said sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid then on proof of such payment and tender of the balance, if any, may execute to the said purchase or purchasers, or his or their legal representative, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the Chief Seminole Nation Lighthorse Police or other officer who made the sale had executed the same.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 959. Payment to Defendant of Overages after Sale**

If, on any sale made as aforesaid, there shall be in the hands of the Chief of the Seminole Nation Lighthorse Police or other officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the Chief of the Seminole Nation Lighthorse Police or other officer shall, on demand, pay the balance to the defendant in execution.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 960. Reversal of Judgment after Sale of Interest in Land**

If any judgment or judgments, in satisfaction of which any non-trust interests lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 961. Execution on Judgment in Favor of Nation**

In all civil actions wherein the Nation as plaintiff, has heretofore or may hereafter recover judgment, and wherein any such action an execution has or may be issued, the Nation through



the officer or officers on whose relation the action was brought, may bid at such execution sale, and buy said property offered for sale, for any amount not to exceed the amount of the judgment in such action and such additional amount as may be approved by the General Council said amount to be credited upon the judgment.

And further, when such property offered for the sale at execution is brought by the Nation, said property may be sold for the Nation by the officer or officers upon whose relation the Nation was party plaintiff, and further provided that at such execution sales the attorney or attorneys representing the Nation may bid for the Nation, not to exceed the amount of the judgment and such additional amount as may be approved by the General Council, provided however, that said bid not more than One Hundred Dollars (\$100.00) higher than the next best bid, and if there be no other bidder, then not to exceed One Hundred Dollars (\$100.00).

And further provided that in disposing of such property so acquired, if it be personal property the officer or successor of the officer upon whose relation the Nation was plaintiff may sell said property by executing a good and sufficient Bill of Sale, to be attested by the Secretary of the Nation. And in disposing of any non-trust interest in real property so acquired or any interest or equity therein, the officer or successor in office on whose relation the Nation was party plaintiff may execute in the name of the Nation by said officer a good and sufficient deed, to be attested by the Secretary of the Nation. Provided, however, that in no event shall any sale be valid under this Title for any amount less than the amount for which said property was originally bid in by the Nation. The funds obtained upon the sale of any such property shall be placed in the fund for which the judgment was obtained, or if none, then shall be set aside for the purchase of further real property by the Nation.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 962. Reappraisal Where Realty Twice Advertised for Sale**

In all cases where a non-trust interest in real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders it shall be the duty of the Court, on motion of the plaintiff, to set aside such appraisal and order a new one to be made, or to set aside such levy and appraisal and order a new execution to issue, as the case may require.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 963. Return of Execution**

The Chief of the Seminole Nation Lighthorse Police Department or other officer to whom any writ of execution shall be directed, shall return such writ to the Court to which the same is returnable, within ninety (90) days from the date thereof.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 964. Principal and Surety**

In all cases where judgment is rendered in the District Court upon any instrument of writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the Court, by parole or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his or their co-defendant, it shall the duty of the clerk of said Court, in recording the judgment thereon to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the Court aforesaid shall issue execution on such judgment, commanding the Chief of the Seminole Nation Lighthorse Police Department or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor; but for want of sufficient property of the principal or debtor to make the same that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 965. Hearing on Assets**

In addition to other discovery procedures, the Court, at any time after judgment upon motion of the judgment creditor, may order the judgment debtor to appear and answer concerning his property subject to execution to satisfy the judgment. The order to appear shall be served on the judgment debtor as a summons is served and may contain an order prohibiting the conveyance of any non-exempt property, and may order the production of any books, records, documents, or paper relating to the judgment creditors property. Such order may be enforced by contempt proceedings.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 966. RESERVED**

#### **Section 967. RESERVED**

#### **Section 968. RESERVED**

#### **Section 969. RESERVED**

#### **Section 970. RESERVED**

## **SUBCHAPTER C CONTRIBUTION**

### **Section 971. Joint Debtors or Sureties**

When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is laid upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may regardless of the nature of the demand upon which the judgment was rendered, compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any party thereof, either by sale of his property or before sale, he may compel repayment from the principal; in such case, the person so paying or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten (10) days after his payment he file with the Clerk of Court notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk shall make an entry thereof in the margin of the docket.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 972. Joint Tortfeasors – Contribution – Indemnity – Exemptions – Release, Covenant**

(a) When two or more persons become jointly or severally liable in tort for the same injury to person or property for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them except as provided in this section.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer which by payment has discharged, in full or in part, the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent

(f) This Title does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for

any portion of his indemnity obligation.

(g) This subchapter shall not apply to breaches of trust or of other fiduciary obligation.

(h) When a release, covenant not to sue or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- (1) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
- (2) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 973. RESERVED**

**Section 974. RESERVED**

**Section 975. RESERVED**

**Section 976. RESERVED**

**Section 977. RESERVED**

**Section 978. RESERVED**

**Section 979. RESERVED**

**Section 980. RESERVED**

## **SUBCHAPTER D COSTS**

### **Section 981. Affidavit in Forma Pauperis**

Any person who cannot afford to pay costs of an action in order to vindicate his rights may be allowed by the Court to proceed without paying costs upon the filing of an affidavit in forma pauperis. The affidavit in forma pauperis shall be in the form following, and attached to the petition, viz.:

#### **SEMINOLE NATION OF OKLAHOMA DISTRICT COURT**

I do solemnly swear that the cause of action set forth in the petition hereto prefixed is just, and I (or we) do further swear that by reason of my (or our) poverty, I (or we) am (are) unable to give security for costs.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 982. False Swearing in Such Case**

Any person willfully swearing falsely in making the affidavit aforesaid, shall, on conviction, be adjudged guilty of perjury, and punished as the law prescribes.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 983. Costs Where Defendant Disclaims**

Where defendants disclaim having any title or interest in land or other property, the subject matter of action, they shall recover their costs, unless for special reasons the Court decides otherwise.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 984. Certain Costs Taxes at Discretion of Court**

Unless otherwise provided by statute, the costs of motions, continuances, amendments and the like, shall be taxed and paid as the Court, in its discretion, may direct.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 985. Costs To Successful Party as Matter of Course**

Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the party, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific, real or personal property.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 986. Costs in Other Cases**

In other actions, the Court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 987. Several Actions on Join Instrument**

Where several actions are brought on one bill of exchange, promissory note or other obligation, or instrument in writing, against several parties who might have been joined as defendants in the same action, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were at the commencement of the previous action, openly within the Nation or otherwise subject to suit and service of process in the District Court and the whereabouts of such persons were known or could have been ascertained with reasonable diligence.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 988. Clerk to Tax Costs**

The Clerks of the District Court shall tax the costs in each case, and insert the same in their respective judgments, subject to re-taxation by the Court, on motion of any person interested.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 989. Cost of Notice or Other Legal Publication**

Whenever any notice, or other legal publication is required by law to be made in any action or proceeding pending in the Court, the cost of such publication shall be taxes as other costs in said action or proceeding.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 990. Attorney Fees Taxable as Costs**

(a) In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxes and collected as costs.

(b) In any civil action to enforce payment of or to collect upon a check, draft or similar bill of exchange drawn on a bank or otherwise payment upon which said instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded a reasonable attorney's fee, such fee to be assessed by the Court as costs against the losing party, provided, that said fee shall not be allowed unless the plaintiff offers proof during the trial of said action that prior to the filing of the petition in the action demand for payment of the check, draft or similar bill of exchange had been made upon the defendant by registered or certified mail not less than ten (10) days prior to the filing of such suit.

(c) In any civil, action or proceeding to recover for the overpayment of any charge for water, sanitary sewer, garbage, electric or natural gas service from any person, firm or corporation or to determine the right of any person, firm or corporation to receive any such service, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxes and collected as costs.

(d) In any civil action brought to recover damages for breach of an express warranty or to enforce the terms of an express warranty against the seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, which shall be taxes and collected as costs.

(e) In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees. Court costs and interest to be set by the Court and to be taxes and collected as other costs of the action, except that a plaintiff who is required to pay costs pursuant to Section 903 of this Title may not recover his attorney's fees as provided by this subsection.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 991. Costs Defined**

Costs include, in addition to items of expense specifically recoverable as costs pursuant to any statute of the Nation, fees required to be paid by law for the filing of any paper in an action expense for service of process as provided by law, costs of transcripts, Lighthorseman fees for service of papers and mileage, costs of publication of any notice required to be published printing of briefs or other documents required by the Court to be printed, and any other items made recoverable as costs by Court rule.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 992. Authority of Court to Fix Cost Rates**

The Court by rule may set the fees and costs of any service performed by the Court Clerk or Chief of the Seminole Nation Lighthorse Police on behalf of the parties when such fees and costs are not provided for by law. Such fees and costs shall be maintained at the minimum level possible considering the needs of the Court Fund.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]



## **CHAPTER TEN**

### **LIMITATION OF ACTIONS**

#### **Section 1001. Limitations Applicable**

Civil actions can only be commenced within the periods prescribed in this Chapter after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation. There shall be no statute of limitations applicable against civil actions brought by the Nation on its own behalf except to the extent that a statute of limitation is expressly stated to be applicable to the Nation by law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1002. Limitation of Real Actions**

Actions for the recovery of real property or for the determination of any adverse right or interest therein, can only be brought within the period hereinafter prescribed, after the claim shall have accrued, and at no other time thereafter.

(a) An action for the recovery of non-trust interest in real property sold on execution, or for the recovery of real estate partitioned by judgment in kind, or sold, or conveyed pursuant to partition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of the Court, in administration or probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his or their heirs, or any person claiming under him or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five (5) years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five (5) years after the date of the entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five (5) years after the recording of the decree of distribution rendered by the Court in an administration or probate proceeding; provided, however, that where any such action pertains to real estate distributed under decree of the Court in administration or probate proceedings and would at the passage of this Title be barred by the terms hereof, such action may be brought within five (5) years after the passage of this Title.

(b) An action for the recovery of real property sold by executors, administrators, or guardian, upon an order or judgment of a Court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his guardian, or any person claiming under any or either of them, by the title acquired after the date of judgment or order, within five (5) years after the date of the recording of the deed made in pursuance of the sale.

(c) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed.

(d) An action for the recovery of real property not hereinbefore provided for, within twenty (20) years.

(e) An action for the forcible entry and detention or forcible detention only of real property, within three (3) years.

(f) Paragraphs (a) - (c) shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of five (5) years from and after its effective date.

(g) Nothing in this Section should be construed to impose any statute of limitation upon the enforcement of a right to possession of real property held by the United States in trust for any Indian or Indian Tribe under any law of the United States in conformity to the laws of the United States relating to such real property.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1003. Persons Under Disability – In Real Property Actions**

Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within two (2) years after the disability is removed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1004. Limitation of Other Actions**

Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

(a) Within seven (7) years: An action upon any contract, agreement or promise in writing.

(b) Within five (5) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action on a foreign judgment.

(c) Within three (3) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.

(d) Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

(e) An action upon the official bond or undertaking of an executor, administrator, guardian, Seminole Nation Lighthorse Police Officer, or any other officer, or upon the bond or undertaking given in attachment, injunction arrest or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued.

(f) An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1005. Persons under Disability in Actions other Than Real Property**

If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one (1) year after such disability shall be removed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1006. Absence or Flight of Defendant**

When a cause of action accrues against a person and that person is outside the Court's jurisdiction or has concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the Court's jurisdiction or is no longer concealed. If, after a cause of action accrues against a person and that person leaves the Court's jurisdiction or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute (a) extends the exercise of the Court's jurisdiction over a person or corporation based upon service outside the Court's jurisdiction or based upon service by publication and (b) permits the Court of this Tribe to acquire personal jurisdiction over the person, then the period of his absence or concealment shall be computed as part of the period within which the action must be brought.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1007. Limitation of New Action After Failure**

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within two (2) years after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed. An appeal of any judgment or order against the plaintiff other than on the merits as above stated shall toll the two (2) year period during the pendency of the appeal.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1008. Extension of Limitation**

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgement of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1009. Statutory Bar Absolute**

When a right of action is barred by the provisions of any applicable statute, it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim, setoff, or cross-claim.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1010. Law Governing Foreign Claims**

The period of limitation applicable to a claim accruing outside of the Nation shall be that prescribed either by the law of the place where the claim accrued or by the law of the Nation whichever last bars the claim.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1011. Limitation of Building Construction Tort Claims**

No action in tort to recover damages:

- (a) For any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,
- (b) For injury to property, real or personal, arising out of any such deficiency, or
- (c) For injury to the person or for wrongful death arising out of any such deficiency. shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction or construction of such an improvement more than ten (10) years after substantial completion of such an improvement.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER ELEVEN**

### **RESERVED**

## **CHAPTER TWELVE**

### **FORCIBLE ENTRY AND DETAINER**

#### **Section 1201. Forcible Entry and Detention**

The District Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this Title shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1202. Powers of Court**

The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1203. Extent of Jurisdiction**

Proceedings under this Chapter may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales so made, on execution or otherwise, shall have been examined by the Court, and the same adjudged valid; and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This Section is not to be construed as limiting the provisions of the preceding section.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1204. Issuance and Return of Summons**

The summons shall be issued and returned as in other cases, except that it shall command the Chief of the Seminole Nation Lighthorse Police Department or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The

summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1205. Service of Summons**

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of the trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by registered mail with return receipt postmarked at least three (3) days before the date of trial.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1206. Constructive Service of Summons**

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by registered mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the posting by the Seminole Nation Lighthorse Police of said summons conspicuously on the building on the premises, and, if there be no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least ten (10) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last known address by registered or certified mail at least seven (7) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1207. Answer of Affidavit by Defendant**

In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the District Court. If the defendant files an affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1208. Affidavit Form**

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the Clerk of the Court:

**DISTRICT COURT  
SEMINOLE NATION OF OKLAHOMA**

_____	)	
Plaintiff	)	
	)	
vs.	)	Case No. SC-_____
	)	
_____	)	
Defendant	)	

**FORCIBLE ENTRY AND DETAINER AFFIDAVIT**

	)	
Seminole Nation of Oklahoma	)	ss.
]	)	

\_\_\_\_\_ being duly sworn, deposes and says:

- (1) The defendant resides at \_\_\_\_\_, and defendant's mailing address is \_\_\_\_\_.
- (2) The defendant is indebted to the plaintiff in the sum of \$ \_\_\_\_\_ for rent and the further sum of \$ \_\_\_\_\_ for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay the same and no part of the amount sued for herein has been paid; and/or
- (3) The defendant is wrongfully in possession of certain real property within the Nation described as \_\_\_\_\_; the plaintiff is entitled to possession thereof and has made demand on the defendant to vacate the premises, but the defendant refused to do so.

\_\_\_\_\_  
Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



Notary Public (Clerk or Judge)

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

### SUMMONS

The [Name of Tribe] to the within named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as \_\_\_\_\_ or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at \_\_\_\_\_ [Name or address of Courthouse], in \_\_\_\_\_, [Town], [Name of Tribe], at the hour of \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_ month, 20\_\_\_\_, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summons is issued). You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the Seminole Nation Lighthorseman to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court (of Judge)

Plaintiff or Attorney  
Address  
Telephone Number

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012; section number updated from 1214 to 1208 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THIRTEEN**

### **HABEAS CORPUS**

#### **Section 1301. Persons Who May Prosecute Writ**

Every person restrained of his liberty, under any pretense whatever, may prosecute, a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when the restraint is illegal.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1302. Application for Writ**

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

(a) By whom the person, in whose behalf the writ is requested, is restrained of his liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known.

(b) The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

(c) If the restraint be alleged to be illegal, in what the illegality consists.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1303. Writ Granted**

Writs of habeas corpus may be granted by any judge or magistrate of the District Court, either in open Court, or in vacation; and upon application the writ shall be granted without delay.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1304. Direction and Command of Writ**

The writ shall be directed to the officer of party having the person under restraint, commanding him to have such person before the Court, or judge, at such time and place as the Court or judge shall direct, to show cause if any he has for the restraint imposed upon the person on whose behalf the writ is issued, to do and receive what shall be ordered concerning him and have then and there the writ in his possession.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1305. Delivery to Chief of Seminole Nation Lighthorse Police Department**

If the writ be directed to the Chief of the Seminole Nation Lighthorse Police Department, it shall be delivered by the Clerk to him without delay.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1306. Service on Party Other Than Chief of Seminole Nation Lighthorse Police Department**

If the writ be directed to any other person, it shall be delivered to the Chief of the Seminole Nation Lighthorse Police Department and shall be by him served by delivering the writ to such person without delay.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1307. Service When Person Not Found**

If the person to whom such writ is directed cannot be found, or shall refuse admittance to the Chief of the Seminole Nation Lighthorse Police Department, the same may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either of his dwelling house or where the party is confined under restraint.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1308. Return and Enforcement of Writ**

The Chief of the Seminole Nation Lighthorse Police Department or other person to whom the writ is directed shall make immediate return thereof, and if he neglect or refuse, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein, and no sufficient excuse be shown for such neglect or refusal, the Court shall enforce obedience by attachment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1309. Manner of Return**

The return must be signed and verified by the person making it, who shall state:

- (a) The authority or cause of restraint of the party in his custody.
- (b) If the authority be in writing, he shall return a copy and produce the original on the hearing.

(c) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.

He shall produce the party on the hearing, unless prevented by sickness or infirmity or other good cause, which must be shown in the return.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1310. Proceedings in Case of Sickness or Infirmity**

The Court or judge, if satisfied with the truth of the allegation of sickness or infirmity or other good cause for not producing the body of the person, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1311. Hearings and Discharge**

The Court or Judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1312. Limits on Inquiry**

No judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

(a) Upon process issued by any court or judge of the United States, or of any State or where such court or judge has exclusive jurisdiction; or,

(b) Upon any lawful process issued on any final judgment of a court of competent jurisdiction; or,

(c) For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

(d) Upon a warrant or commitment issued from the District Court, or any other court of competent jurisdiction, upon indictment or information.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1313. Writ Upon Temporary Commitment**

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1314. Writ May Issue to Admit to Bail**

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1315. Notice to Interested Persons**

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1316. Powers of Court**

The Court or judge shall have power to require and compel attendance of witnesses and to do all other acts necessary to determine the case.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1317. Officers Not Liable for Obeying Orders**

No Seminole Nation Lighthorseman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement made thereon.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1318. Issuance of Warrant of Attachment**

Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the

Court or judge, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court or judge may cause a Warrant of Attachment to be issued, reciting the facts, and directed to the Chief of the Seminole Nation Lighthouse Police Department, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the Court or judge, to be dealt with according to law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1319. Arrest of Party Causing Restraint**

The Court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1320. Execution of Warrant of Attachment**

The officer shall execute the Warrant of Attachment by bringing the person therein named before the Court or Judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1321. Temporary Orders**

The Court or Judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the Court or Judge.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1322. Issuance and Service on Sunday**

Any writ, warrant, or process authorized by this Chapter may be issued and served, in case of emergency on any day including Saturday, Sundays, and holidays.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1323. Issue of Process**

All writs and other process, authorized by the provisions of this Chapter may be issued by the Clerk of the Court upon direction of a Judge, and except summons, sealed with the seal of such Court and shall be served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect

therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments, when necessary.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1324. Protection of Children and Incompetent Persons**

Writ of habeas corpus shall be granted in favor of parents, guardians, conservators, husbands, and wives; and to enforce the rights and for the protection of children and incompetent persons; and the proceedings shall, in all such cases, conform to the provisions of this Chapter.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1325. Security for Costs Not Required**

No deposit or security for costs shall be required of an applicant for a writ of habeas corpus.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER FOURTEEN**

### **MANDAMUS**

#### **Section 1401. Functions of Mandamus**

The writ of mandamus may be issued by the Supreme Court or the District Court, or any justice or judge thereof to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior tribunal or offer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion, or discretion committed to an agency by law unless exercised in violation of law.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1402. Writ Not Issued Where Remedy at Law**

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1403. Forms and Contents of Writs**

The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to perform or show cause before the Court at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1404. When Peremptory Writ to Issue**

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]



#### **Section 1405. Petition Upon Affidavit**

The petition for the writ must be made upon affidavit, and the Court may require a notice of the application to be given to the adverse party or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1406. Allowance and Service of Writ**

The allowance of the writ must be endorsed thereon, signed by the Judge of the Court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglects to return the same, he shall be proceeded against as for contempt.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1407. Answer**

On the return day of the alternative writ, or such further day as the Court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to a complaint in a civil action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1408. Failure to Answer**

If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1409. Similarity to Civil Action**

No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had, in the same manner as in a civil action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1410. Recovery By Plaintiff**

If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the Court, or by referees, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1411. Damages Bar Further Actions**

A recovery of damages, by virtue of this Chapter against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1412. Penalty for Refusal or Neglect to Perform**

(a) Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the Court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a fine, not exceeding Five Hundred Dollars (\$500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the Nation's treasury.

(b) Whenever the peremptory writ of mandamus is directed to any private person commanding the performance of any private duty specifically enjoined by law, if it appear to the Court that such person has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding Five Hundred Dollars (\$500.00) upon such person and may commit him to the custody of the Seminole Nation Lighthorseman for a term of sixty (60) days or until he shall perform or agree to perform such duty or otherwise purge his contempt. The Court may, in an appropriate case, order the Chief of the Seminole Nation Lighthorse Police Department to perform the act required which performance shall have the same effect as if performed by the person the person to whom the peremptory writ was issued.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER FIFTEEN QUO WARRANTO**

### **Section 1501. Quo Warranto – Relief Obtainable by Civil Action**

The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election pursuant to Title 10 (Elections), and before the expiration of thirty (30) days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed on the basis that they were filed prematurely and which shall be deemed valid and timely if commenced after the issuance of the election certificate or after twenty (20) days after the result of said election having been declared by such election board; and provided further, that this Chapter shall not apply to any primary election.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1502. Grounds for Action**

Such action may be brought in the Supreme Court by its leave or in the District Court, in the following cases:

- (a) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within the Nation or any office in any corporation created by authority of the Nation;
- (b) Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;
- (c) When any association or number of persons shall act within the Nation as a corporation without being legally incorporated or domesticated;
- (d) When any corporation does or admits acts which amount to a surrender or a forfeiture of its rights and privileges as a corporation, or when any corporation abuses its power or intentionally exercises powers not conferred by law;
- (e) For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1503. Persons Whom May Bring Action**

When the action is brought by the Attorney General when directed to do so by competent authority, it shall be prosecuted in the name of the Nation, but where the action is brought by a

person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such persons. Whenever the action is brought against a person for usurping an office by the Attorney General, he shall set forth in the petition the name of the person rightfully entitled to the office and his right or title thereto; when the action in such case is brought by the person claiming title, he may claim and recover any damage he may have sustained.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1504. Judgment in Contest for Office**

In every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1505. Judgment for Plaintiff**

If judgment be rendered in favor of the plaintiff or person entitled, he shall proceed to exercise the functions of the office, after he has been qualified as required by law; and the Court shall order the defendant to deliver over all the books and papers in his custody or within his power, belonging to the office from which he shall have been ousted.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1506. Enforcement of Judgment**

If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the Court or judge thereof, shall enforce the order by attachment or imprisonment, or both.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1507. Separate Action for Damages**

When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any one time within one (1) year after the judgment. The Court may give judgment of ouster against the defendant, and exclude him from his office, franchise or corporate rights; and in cases of corporations, may give judgment that the same shall be dissolved.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1508. Corporations**

If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the Court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

## CHAPTER SIXTEEN SMALL CLAIMS PROCEDURE

### Section 1601. Small Claims

- (a) The following suits may be brought under the small claims procedure:
- (1) Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other court costs, does not exceed Two Thousand Dollars (\$2,000.00). Libel or slander actions may not be brought in the small claims court.
  - (2) Actions to replevy personal property where the value of personal property sought to be replevied does not exceed Two Thousand Dollars (\$2,000.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does not exceed Two Thousand Dollars (\$2,000.00);

(b) No action may be brought under small claims procedure by any collection agency or any assignee of a claim. In those cases which are uncontested the amount of attorney's fees allowed shall not exceed ten percent (10%) of the judgment.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### Section 1602. Small Claims Affidavit

Actions under the small claims procedure shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

#### DISTRICT COURT SEMINOLE NATION OF OKLAHOMA SMALL CLAIMS DIVISION

	)	
Plaintiff	)	
	)	
vs.	)	Case No. SC- <span style="border-bottom: 1px solid black; display: inline-block; width: 150px;"></span>
	)	
	)	
Defendant	)	

#### SMALL CLAIMS AFFIDAVIT

)



For the amount of said claim as it is stated in said affidavit, for possession of the personal property described in said affidavit, and, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of this order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_.

\_\_\_\_\_  
Clerk of the Court (or Judge)

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1603. Preparation of Affidavit**

The claimant shall prepare such an affidavit as is set forth in Section 1602 of this Chapter or, at his request, the Clerk of said Court shall draft the same for him. Such affidavit may be presented by the claimant in person or set to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1604. Service of Affidavit**

Unless service by the Chief of the Seminole Nation Lighthouse Police Department or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the Clerk shall deliver a copy of the affidavit and order to the Chief of the Seminole Nation Lighthouse Police Department who shall serve the defendant in the time stated in Section 1605.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1605. Date for Appearance**

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new alias order setting a new day for the appearance of the defendant, which shall not be more than thirty (30) days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff



to appear on said date.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1606. Transfer of Actions**

On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action, and thereafter, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The clerk shall enclose a copy of the order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxes as costs in the case.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**Section 1607. Counterclaim or Setoff**

No formal pleading, other than the claim and notice, shall be necessary, and there is no requirement to assert any counterclaim or cross claim, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff or his attorney in person, and filed with the Clerk of the Court not later than forty-eight (48) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

**DISTRICT COURT  
SEMINOLE NATION OF OKLAHOMA  
SMALL CLAIMS DIVISION**

	)	
Plaintiff	)	
	)	
vs.	)	Case No. SC- <u>          </u>
	)	
	)	
Defendant	)	

**CLAIM OF DEFENDANT**

Seminole Nation of Oklahoma                     )  
   )       ss.  
   )

\_\_\_\_\_ being first duly sworn, deposes and says: That said plaintiff is  
indebted to said defendant in the sum of \$\_\_\_\_\_ for  
\_\_\_\_\_ which amount defendant prays may be allowed as a claim  
against the plaintiff herein.

\_\_\_\_\_  
Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (or Clerk Judge)

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June  
5, 2010; approved by BIA February 2, 2012.]

**Section 1608. Actions for Amounts Exceeding in Excess of Two Thousand Dollars**

If a claim, a counterclaim, or a setoff is filed for an amount in excess of Two Thousand Dollars (\$2,000.00), the action shall be transferred to the general civil docket of the District Court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Two Thousand Dollars (\$2,000.00) may not be enforced for the part that exceeds Two Thousand Dollars (\$2,000.00) shall deposit with the Clerk, of the Court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June  
5, 2010; approved by BIA February 2, 2012.]

**Section 1609. Attachment or Garnishment: Other Matters**

No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases. No depositions shall be taken, or interrogatories or other discovery proceeding shall be used under the small claim's procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June  
5, 2010; approved by BIA February 2, 2012.]

### **Section 1610. Trial by Court**

Actions under the small claims procedure shall be tried to the Court. Provided, however, if either party wishes a reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the Clerk the sum of Twenty Dollars (\$20.00) against the costs of producing the record. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1611. Payment of Judgment**

If judgment be rendered against either party for the payment of money, said party shall pay the same forthwith, provided, however, the judge may make such order as to time of payment or otherwise as may, by him, be deemed to be right and just.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1612. Appeals**

Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court in the same manner as appeals are taken in other civil actions, provided that any other party which did not request a reporter and provided in Section 1610 shall not be granted a new trial or other relief on appeal due to lack of a record.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1613. Fees**

A fee shall be charged and collected for the filing of the affidavit for the commencement of any action, for the filing of any counterclaim or setoff, for the mailing of the copy of the affidavit as determined by rules of the Court, and, if the affidavit and order are served by the Seminole Nation Lighthorse Police Department, the Clerk shall collect the usual police service fee, which shall be taxes as costs in the case. After judgment, the clerk shall issue such process and shall be entitled to collect such fees and charges as are allowed by law for the like services in other actions. All fees collected hereunder shall be deposited with other fees that are collected by the District Court. Provided that any statute provided for an award of attorney's fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1614. Costs**

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1615. Judgments Rendered Under Small Claims Procedure**

(a) Except as otherwise provided herein, judgments rendered under the Small Claims Procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.

(b) Any small claims judgment, when satisfied by payment other than through the officer of the Court Clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court Clerk to the judgment creditor at his last known address at least ten (10) days prior to the hearing of the application. Payment of all costs necessary to accomplish said release shall be paid by the judgment debtor.

(c) Such judgment shall become a lien on any non-trust interest real property of the judgment debtor within the Nation only from and after the time a certified copy of the judgment has been filed in the office of the Court Clerk for entry in the clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court Clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and the Court Clerk shall provide the proper certified copy of the judgment necessary to file.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1616. Fee for Docketing Judgments**

The Court Clerk shall, upon payment by the prevailing part of a fee established by Court rule, cause the judgment to be entered upon the judgment docket. Fees collected pursuant to this section shall become part of the cost of the action.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1617. Other Actions in Small Claims Court**

By leave of the Court, and with the consent of all parties, other actions not provided by herein, or exceeding the maximum amount allowed to be claimed by Section 1601 and 1608, except actions for liable and slander, may be tried under the small claims procedure. The motion for leave to file in such cases shall contain the consent of the defendant endorsed thereon, or such consent shall be

promptly filed upon the submittal for filing of the small claims affidavit.

[HISTORY: Enacted by TO 92-8, July 27, 1992; amended by TO 2010-02, June 5, 2010; approved by BIA February 2, 2012.]

**TITLE 3A  
BUSINESS AND CORPORATE REGULATION COMMISSION  
INDEX**

<b>TITLE 3A BUSINESS AND CORPORATE REGULATION COMMISSION INDEX .....</b>	<b>i</b>
<b>TITLE 3A BUSINESS AND CORPORATE REGULATION COMMISSION.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Findings .....	1
Section 103. Purpose .....	2
Section 104. Severability .....	2
Section 105. Definitions .....	2
<b>CHAPTER TWO BUSINESS AND CORPORATE REGULATORY COMMISSION.....</b>	<b>4</b>
Section 201. Creation of the Business and Corporate Regulatory Commission. ....	4
Section 202. Qualifications of Commissioners.....	4
Section 203. Authority and Duties of Commission.....	4
Section 204. Commission Director .....	6
Section 205. Deposits of Revenues .....	8
<b>CHAPTER THREE ENFORCEMENT AND APPEALS .....</b>	<b>9</b>
Section 301. Enforcement .....	9
Section 302. Appeals .....	11
Section 303. Confiscation and Sale .....	12
Section 304. Orders to Police .....	12

**TITLE 3A**  
**BUSINESS AND CORPORATE REGULATION COMMISSION**  
**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Title**

This Act shall be known as the Business and Corporate Regulation Code of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

**Section 102. Findings**

The General Council finds that:

(a) Under the Constitution of the Seminole Nation, the General Council may legislate upon matters to become laws of the Nation, including:

- (1) To promote public health, education and charity and such other services that may contribute to the social and economic advancement of the members of the Seminole Nation of Oklahoma (Article V (a));
- (2) To enter into any contract in behalf of the Nation in conjunction with any activity that will further the well-being of the members of the Nation (Article V (f));
- (3) To speak or act on behalf of the Nation in all matters in which the Nation is empowered to act (Article V - Powers of the General Council);
- (4) To exercise any powers not specifically set forth in Article V of the Constitution which at some future date may be appropriately delegated to the General Council (Article V (i));

(b) The future of the Seminole Nation and the welfare of its people depend upon economic development and financial independence. The Seminole Nation must become self-sufficient in its economic affairs as outside resources can be temporarily or permanently discontinued. Economic development and independence is a goal of the Seminole Nation and an expression of its sovereignty.

(c) The present needs of the Seminole people include a need to expand its resource base through a Business and Corporate Regulation Commission, and establishment of said commission is in the best interest of the Seminole people and their economic advancement.

(d) The Seminole Nation must establish standards of business practices with attendant responsibilities and provide a method to regulate licensing within the Seminole Nation jurisdiction.

(e) The Seminole Nation must provide official permission for its citizens and/or operators to conduct business in tobacco and tobacco related product sales and provide documentary evidence of that permission through a license pursuant to Title 28 of the Code of Laws of the Seminole Nation.

(f) The Seminole Nation must provide official permission for corporations, both domestic and foreign, to conduct business in the Nation's jurisdiction, and must provide appropriate documentary evidence of that permission as set forth in Title 4, Title 4A and any other title of the Code of Laws of the Seminole Nation.

(g) The Seminole Nation must provide regulation of all business transactions in the Nation's jurisdiction and must provide appropriate documentary evidence of such business transactions as set forth in Title 29 and any other title of the Code of Laws of the Seminole Nation.

(h) It is in the interest of the Seminole Nation and its members to provide a method to regulate tobacco wholesalers and retailers and other businesses and corporations operating within the Seminole Nation.

[HISTORY: Enacted by TO 92-15, November 14, 1992; amended by TO 2007-17, March 1, 2008.]

### **Section 103. Purpose**

It being necessary to strengthen the Nation's government by licensing and regulating business activities within the Nation's jurisdiction, to provide financing for the current expenses of the Nation's government, and to provide financing for the operation and expansion of the Nation's essential governmental functions and services in order for the Seminole Nation of Oklahoma to efficiently and effectively exercise its confirmed governmental responsibilities within the jurisdiction of the Seminole Nation of Oklahoma, the purpose of this title is to provide simple, fair, straight-forward and efficient procedures, to provide for the licensing and regulation of said business activities, including the collection of licensing fees, corporate fees and payments in lieu of taxes.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

### **Section 104. Severability**

The provisions of this Act are severable, and if any part or provision hereof shall be held void by the Nation's District Court or by a federal court, the decision of the court so holding shall not affect or impair any of the remaining provisions, or parts of provisions, of the Act.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992.]

### **Section 105. Definitions**

(a) As used in this Title, unless the context otherwise requires, the following terms shall be defined as set forth in Title 4, § 102 of the Code of Laws of the Seminole Nation:



“Attorney General,” “Articles of Incorporation,” “Authorized Shares,” “Capital Surplus,” “Commission,” “Corporation” or “Domestic Corporation,” “Court,” “District Court,” “Earned Surplus,” “Employee,” “Foreign Corporation,” “Insolvent,” “Jurisdiction,” “Nation,” “Net Assets,” “Share,” “Prosecutor,” “Shareholder,” “Stated Capital,” “Subscriber,” “Surplus,” and “Treasury Shares.”

(b) As used in this Title, unless the context otherwise requires, the following terms shall be defined as set forth in Title 28, § 106 of the Code of Laws of the Seminole Nation: “BCR Commission,” “Commission,” “Compact,” “Entity,” “License,” “Payment in Lieu of Taxes,” “Territorial Jurisdiction of the Nation,” “Tobacco Products,” “Tobacco Wholesale Business or Wholesale Distributor,” and “Tobacco Retail Business.”

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

## **CHAPTER TWO**

### **BUSINESS AND CORPORATE REGULATORY COMMISSION**

#### **Section 201. Creation of the Business and Corporate Regulatory Commission**

The Seminole Nation Business and Corporate Regulatory Commission is hereby established to serve as an agency of the Seminole Nation of Oklahoma. The Business and Corporate Regulatory Commission shall consist of five Commissioners who shall be appointed by the Principal Chief, subject to confirmation by the General Council. When the first Commissioners are appointed, two shall be appointed to serve a term ending on December 31, 1993, two shall be appointed to serve a term ending on December 31, 1994, and one shall be appointed to serve a term ending on December 31, 1995. Thereafter, each term shall be for a period of three years, commencing on January 1 of the year following the December 31 expiration date of said term. The Principal Chief shall have the authority to remove a Commissioner for cause prior to expiration of the commissioner's term.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 202. Qualifications of Commissioners**

Any person who is twenty-five years of age or older and who is at least one-quarter Seminole and a member of the Seminole Nation shall be eligible to serve as a Commissioner of the Business and Corporate Regulatory Commission, provided that no person who is an employee or a licensee of the Nation shall be eligible to serve as a Commissioner.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 203. Authority and Duties of Commission**

The Commission shall be responsible for the orderly development, administration, and regulation of business and corporate activities in the Nation's jurisdiction. The Commission shall have the following authority:

(a) To ensure the enforcement of all laws of the Nation regarding the collection of licensing fees, corporate fees and payments in lieu of taxes and to ensure the Nation's good faith compliance with all inter-governmental compacts between the Nation and other tribal, state or federal agencies involving business and corporate activities in the Nation's jurisdiction, and to take appropriate enforcement action authorized by law of the Nation;

(b) To issue rules and regulations governing the following:

- (1) Financial and operational records of the Commission;
- (2) Collection of licensing fees, corporate fees and payments in lieu of taxes authorized herein;
- (3) Appeal procedures for applicants, licensees, or any other persons or legal entities subject to the provisions of this Title, Title 4, Title 4A, Title 28,

Title 29, and any other titles of the Code of Laws of the Seminole Nation that regulate business or corporate activities in the Nation's jurisdiction; and

- (4) Compliance with all inter-governmental compacts between the Nation and other tribal, state or federal agencies involving business and corporate activities in the Nation's jurisdiction;
- (5) Any other regulations consistent with the laws of the Seminole Nation as may be necessary to administer and enforce any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, Title 29 of the Code of Laws of the Seminole Nation consistent with the provisions of such titles that delegate such authority to the BCR Commission.

(c) To provide quarterly reports to the General Council of the Seminole Nation regarding Commission activities, including quarterly financial reports regarding revenues collected by the Commission and regarding Commission expenditures;

(d) To employ a Commission Director who shall carry out the day-to-day functions of the Commission pursuant to § 204 herein, provided that such hiring authority shall include the authority to fire said Director; and

(e) To propose laws for General Council approval related to business and corporate regulation;

(f) To prepare an annual budget for the Commission office, including staff salaries, Commissioner salaries, Commissioner expenses and Commission office expenses, for approval of the General Council so that sufficient funds may be transferred into an operating account for the Commission to cover costs of operating the Commission;

(g) To serve as an administrative appeals board to resolve any disputes arising from the actions of the Commission and the Commission Director pursuant to the provisions of any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation, that delegate such authority to the BCR Commission; provided that all appeals of actions of the BCR Commission Director pursuant to section 1104 of Title 4 of the code of Laws of the Seminole Nation shall be taken directly to the District Court of the Seminole Nation; and

(h) To fulfill other functions of this agency which are necessary to the efficient and orderly administration of the Commission and which are consistent with the provisions any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation, that delegates such authority to the BCR Commission.

[HISTORY: Enacted by TO 92-15, November 14, 1992; amended by TO 2007-17, March 1, 2008.]

**Section 204. Commission Director**

The position of Commission Director shall be a full-time position. The Commission Director shall have responsibility for the day to day operation of the BCR Commission office and shall engage in the following activities:

- (a) Determination of internal operating procedures for daily operations of the Commission office;
- (b) Act as administrator of the Commission office;
- (c) Participate in the selection and employment of Commission staff pursuant to the hiring practices and policies of the Seminole Nation, including an Assistant Director, if needed and if funds are available; provided that Commission staff, including the Assistant Director, shall be subject to the Commission Director's authority, including the authority to fire said staff;
- (d) Maintenance of the forms, books, and records of the Commission;
- (e) All activities authorized by any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation, that delegate such authority to the BCR Commission. Such authorized activities include, but are not limited to, the following:
  - (1) Reservation of a corporate or limited liability company name upon proper application;
  - (2) Acceptance of registration of corporate or limited liability company name and of renewal of such registration;
  - (3) Collection and acceptance of all licensing fees authorized by any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation, that delegate such authority to the BCR Commission;
  - (4) Acceptance of change of registered name or registered agent;
  - (5) Acting as agent of corporation or limited liability company for purposes of service of process;
  - (6) Approval and/or filing and/or issuance of corporate or limited liability company documents submitted to the Commission office, including licenses, annual reports, articles of incorporation or articles of

organization, amended articles of incorporation or articles of organization, restated articles of incorporation or articles of organization, certificate of incorporation or certificate of organization, bylaws or operating agreement, amended bylaws or amended operating agreement, statement of cancellation of redeemable shares by redemption or purchase, statement of cancellation of other reacquired shares, statement of reduction of stated capital, articles of merger, articles of consolidation, articles of dissolution, statement of intent to dissolve, statement of revocation of voluntary dissolution proceedings, certification of names of corporations which have failed to file annual reports or pay fees, certificate of authority of foreign corporation to transact business, certificate of revocation authority of foreign corporation to conduct business, and any other corporate or limited liability company documents submitted to the Commission office;

- (7) Propound to any corporation, limited liability company, or any other business subject to the provisions of any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation, that delegate such authority to the BCR Commission, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation, limited liability company, or any other business has complied with the provisions of such titles of the Code of Laws of the Seminole Nation that regulate business or corporate activities in the Nation's jurisdiction;
- (8) Hearing and making a determination on objections to any assessments of franchise fees;
- (9) Assessing penalties against corporations for failure to file reports; and
- (10) Conducting all necessary recordkeeping.

(f) Engage in all other activities authorized by any other titles of the Code of Laws of the Seminole Nation that regulate business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation that delegate such authority to the BCR Commission. Such authorized activities include, but are not limited to the following:

- (1) Filing all reports and applications of licensees and permit holders and any other applications or forms that may be required by a title of the Code of Laws of the Seminole Nation to be filed with the Commission Director or at the BCR Commission Office;
- (2) Review and approval or disapproval of all reports and applications of licensees and permit holders and any other applications of forms that may be required by a title of the Code of Laws of the Seminole Nation to be

reviewed or approved by the Commission Director or the BCR Commission;

- (3) Periodic inspection of operations of all licensees, permit holders, or any other business entity that may be required by a title of the Code of Laws of the Seminole Nation to pay fees to the Commission Director or the BCR Commission;
- (4) Computation of fees payable by licensees, permit holders or any other business entity that may be required by a title of the Code of Laws of the Seminole Nation to pay fees to the Commission Director or the BCR Commission;
- (5) Securing the assistance of the Attorney General of the Seminole Nation in taking any necessary civil legal action to enforce the requirements of any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation that delegate such authority to the BCR Commission and securing the assistance of the prosecutor where criminal sanctions are applicable to such enforcement; and
- (6) Maintenance of the following bank accounts: Seminole Nation Business and Corporate Regulation Commission Revenue Account and Seminole Nation Business and Corporate Regulation Commission Operating Account.

[HISTORY: Enacted by TO 92-15, November 14, 1992; amended by TO 2007-17, March 1, 2008.]

#### **Section 205. Deposits of Revenues**

The Commission Director shall deposit all revenues derived from receipts for license, and permits paid to the Commission into an interest-bearing account under the name of the Seminole Nation Business and Corporate Regulations Commission Revenue Account. Said revenues shall remain in that account until appropriated by a duly enacted resolution of the General Council for transfer into the Seminole Nation Business and Corporate Regulations Commission Operating Account or for transfer into the General Fund of the Seminole Nation for essential governmental services.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

## **CHAPTER THREE**

### **ENFORCEMENT AND APPEALS**

#### **Section 301. Enforcement**

(a) Notification of Violation. When the Director has reason to believe a violation of any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 herein of the Code of Laws of the Seminole Nation that delegate such authority to the BCR Commission or a violation of regulations issued by the BCR Commission pursuant to said Titles has occurred, the Director shall notify the business entity in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party the Director has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If informal settlement is not achieved, the Director shall issue a formal notice of non-compliance, which shall also advise the business entity of its right to request a hearing.

(b) Formal Notice of Non-compliance. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the business entity with a reasonable time to comply, which in no event shall be less than five (5) days from the date of receipt of such notice, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five days.

(c) Request for Hearing. The business may request a hearing before the commission which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the entity charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If the entity fails or refuses to comply and does not request a hearing, the commission may proceed pursuant to section 301(f).

(d) Bond During Pendency of Proceedings. If the entity requests a hearing pursuant to section 301(c) herein, and the Director has good cause to believe there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, he may, in his discretion, require the entity to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the entity fails or refuses to post said bond, the Commission may proceed pursuant to section 301(f). The Director may also petition the Nation's District Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

(e) Conduct of Hearings. Any hearing held pursuant to section 301 herein shall be conducted by the BCR Commission. Hearings shall be governed by the following rules or procedure:

- (1) All parties may present testimony of witnesses and other evidence and be represented by counsel at their expense.

- (2) The BCR Commission may have the advice and assistance at the hearing of counsel provided by the Nation.
- (3) The Chairman of the BCR Commission or the Vice-Chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (4) The BCR Commission may consider any evidence that it deems relevant to the hearing, and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission.
- (5) The BCR Commission shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.
- (6) The hearing may be adjourned, postponed and continued at the discretion of the BCR Commission.
- (7) At the final close of the hearings, the BCR Commission may take immediate action or take the matter under advisement.
- (8) In any hearing before the BCR Commission where the issue is compliance by an entity with any of the requirements and provisions of any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation that delegate such authority to the BCR Commission, the burden of proof shall be on the business entity to show compliance.
- (9) The BCR Commission office shall notify all parties within thirty (30) days after the date of the last hearing of its decision in the matter.
- (10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

(f) Remedies Upon Commission Determination of Violation. If, after the hearing, the BCR Commission determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the commission may:

- (1) Deny such party the right to commence business within the territorial jurisdiction of the Seminole Nation;
- (2) Suspend such party's operation of business within the territorial jurisdiction of the Seminole Nation;
- (3) Terminate such party's operation of business within the territorial jurisdiction of the Seminole Nation;



- (4) Deny the right of such party to conduct any further business within the territorial jurisdiction of the Seminole Nation;
- (5) Impose a civil fine on such party in an amount not to exceed \$500 for each violation, provided that each day during which a violation exists shall constitute a separate violation; and
- (6) Order the party to take such other action as is necessary to ensure compliance with any title of the Code of Laws of the Seminole Nation that regulates business or corporate activities in the Nation's jurisdiction, including but not limited to Title 3A, Title 4, Title 4A, Title 28, and Title 29 of the Code of Laws of the Seminole Nation that delegate such authority to the BCR Commission or to remedy any harm caused by a violation of said title, consistent with the requirements of the Indian civil Rights Act, 25 U.S.C. §§ 1301 *et seq.*

(g) Commission Decision; Protection. The BCR Commission's decision shall be in writing, and shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing provided in section 301(e). Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may move the Nation's District Court, and the District Court shall grant, such injunctive relief as necessary to preserve the Nation's rights, pending the party's appeal or expiration of the time for appeal.

[HISTORY: Enacted by TO 92-15, November 14, 1992; amended by TO 2007-17, March 1, 2008.]

## **Section 302. Appeals**

(a) Manner of Taking Appeal. An appeal to the Nation's District Court may be taken from any final order of the BCR Commission by any party adversely affected thereby. The appeal must be filed with the Court no later than twenty (20) days after the party receives a copy of the Commission's decision. The appeal shall be taken by serving a written notice of appeal with the Nation's District Court, with a copy to the Director, within twenty (20) days after the date of the entry of the BCR Commission order. The notice of appeal shall set forth the order from which appeal is taken, specify the grounds upon which reversal or modification of the order is sought, and be signed by the appellant.

(b) Stay of Commission Order Pending Appeal; Bond. The order of the BCR Commission shall be stayed pending the determination of the Nation's District Court, provided that such stay may be conditioned upon the posting of a bond if the Director petitions for a bond and the Court, for good cause shown, orders the appellant to post a bond. The bond shall be sufficient to cover any monetary damages the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court.

(c) Standard of Review. The Nation's District Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

(d) Reversal on Appeal. If the order of the BCR Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) Enforcement of Commission Order. If the BCR Commission's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the Commission's order, the Commission shall petition the Court and the court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

### **Section 303. Confiscation and Sale**

If, twenty-one (21) days after a decision of the BCR Commission pursuant to section 301(g), no appeal has been filed, or thirty (30) days after a decision by the Court on an appeal from a decision by the Commission pursuant to section 302, a party has failed to pay monetary damages imposed on it or otherwise comply with an order of the Commission or the Court, the Commission may petition the Court to order the Nation's Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance. The petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Nation's District Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Nation's Police to confiscate and hold said property or as much as is available. The Nation's Police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation the party has not come into compliance, the court shall order the Nation's Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all costs incurred by the Court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party, with the exception of proceeds from tobacco products confiscated pursuant to the requirements of Title 28, section 303 of the Code of Laws of the Seminole Nation, which shall be retained by the Nation and deposited in the Nation's General Fund.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

### **Section 304. Orders to Police**

The Nation's Police are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the BCR Commission and the Director. Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the order is signed by the

Director and the BCR Commission. The Nation's Police shall not enforce a removal order of the Director unless it is accompanied by a judicial decree by the Nation's District Court.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

**TITLE 4  
CORPORATIONS  
INDEX**

<b>TITLE 4 CORPORATIONS INDEX .....</b>	<b>i</b>
<b>TITLE 4 CORPORATIONS .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Short Title .....	1
Section 102. Definitions .....	1
Section 103. Purposes.....	4
Section 104. General Powers .....	4
Section 105. Indemnification of Officers, Directors, Employees and Agents .....	5
Section 106. Right of Corporation to Acquire and Dispose of Its Own Shares .....	7
Section 107. Defense of Ultra Vires .....	7
Section 108. Corporate Names.....	8
Section 109. Reserved Name .....	9
Section 110. Registration of Name.....	9
Section 111. Renewal of Registered Name.....	10
Section 112. Registered Office and Registered Agent .....	10
Section 113. Change of Registered Office or Registered Agent.....	11
Section 114. Service of Process .....	11
Section 115. Authorized Shares .....	12
Section 116. Issuance of Shares of Preferred or Special Classes in Series.....	13
Section 117. Subscriptions for Shares .....	14
Section 118. Consideration for Shares .....	15
Section 119. Payment for Shares.....	15
Section 120. Stock Rights and Options .....	15
Section 121. Determination of Amount of Stated Capital .....	16
Section 122. Expenses of Organization, Reorganization, and Financing .....	16
Section 123. Certificates Representing Shares.....	17
Section 124. Fractional Shares .....	17
Section 125. Liability of Subscribers and Shareholders .....	18
Section 126. Shareholders' Preemptive Rights.....	18
Section 127. By-Laws.....	18
Section 128. Meetings of Shareholders .....	19

Section 129.	Notice of Shareholders' Meetings.....	19
Section 130.	Closing of Transfer Books and Fixing Record Date .....	19
Section 131.	Voting Record .....	20
Section 132.	Quorum of Shareholders.....	20
Section 133.	Voting of Shares.....	20
Section 134.	Voting Trusts and Agreements among Shareholders .....	21
Section 135.	Board of Directors .....	22
Section 136.	Number and Election of Directors .....	22
Section 137.	Classification of Directors .....	23
Section 138.	Vacancies .....	23
Section 139.	Removal of Directors .....	23
Section 140.	Quorum of Directors .....	23
Section 141.	Director Conflicts of Interest .....	24
Section 142.	Executive and Other Committees.....	24
Section 143.	Place and Notice of Directors' Meetings; Committee Meetings .....	25
Section 144.	Action by Directors without a Meeting .....	25
Section 145.	Dividends.....	25
Section 146.	Distributions from Capital Surplus .....	26
Section 147.	Loans to Employees and Directors .....	27
Section 148.	Liability of Directors in Certain Cases .....	27
Section 149.	Provisions Relating to Actions by Shareholders .....	28
Section 150.	Officers .....	29
Section 151.	Removal of Officers .....	29
Section 152.	Books and Records.....	29
<b>CHAPTER TWO FORMATION OF CORPORATIONS.....</b>		<b>31</b>
Section 201.	Incorporators .....	31
Section 202.	Articles of Incorporation. ....	31
Section 203.	Filing of Articles of Incorporation .....	32
Section 204.	Effective Date of Issuance of Certificate of Incorporation.....	32
Section 205.	Organization Meeting of Directors .....	32
<b>CHAPTER THREE AMENDMENT OF ARTICLES OF INCORPORATION.....</b>		<b>34</b>
Section 301.	Right to Amend Articles of Incorporation.....	34
Section 302.	Procedure to Amend Articles of Incorporation.....	35
Section 303.	Class Voting on Amendments .....	36

Section 304.	Articles of Amendment.....	36
Section 305.	Filing of Articles of Amendment .....	37
Section 306.	Effect of Certificate of Amendment .....	38
Section 307.	Restated Articles of Incorporation .....	38
Section 308.	Proceedings .....	38
Section 309.	Restriction on Redemption or Purchase of Redeemable Shares .....	40
Section 310.	Cancellation of Redeemable Shares by Redemption or Purchase .....	40
Section 311.	Cancellation of Other Reacquired Shares .....	41
Section 312.	Reduction of Stated Capital in Certain Cases .....	42
Section 313.	Special Provisions Relating to Surplus and Reserves .....	44
<b>CHAPTER FOUR MERGER AND CONSOLIDATION.....</b>		<b>45</b>
Section 401.	Procedure for Merger .....	45
Section 402.	Procedure for Consolidation .....	45
Section 403.	Approval by Shareholders .....	46
Section 404.	Articles of Merger or Consolidation.....	46
Section 405.	Merger of Subsidiary Corporation .....	47
Section 406.	Effect of Merger of Consolidation .....	48
Section 407.	Merger or Consolidation of Domestic and Foreign Corporations.....	49
<b>CHAPTER FIVE SALE OF ASSETS .....</b>		<b>51</b>
Section 501.	Sale of Assets in Regular Course of Business and Mortgage or Pledge of Assets.....	51
Section 502.	Sale of Assets Other Than in Regular Course of Business .....	51
Section 503.	Right of Shareholders to Dissent.....	52
Section 504.	Rights of Dissenting Shareholders .....	52
Section 505.	Procedures for District Court Action for Determination of Fair Value of Shares .....	54
<b>CHAPTER SIX DISSOLUTION .....</b>		<b>56</b>
Section 601.	Voluntary Dissolution by Incorporators .....	56
Section 602.	Voluntary Dissolution by Consent of Shareholders .....	57
Section 603.	Voluntary Dissolution by Title of Corporation .....	57
Section 604.	Filing and Approval of Statement of Intent to Dissolve.....	58
Section 605.	Effect of Statement of Intent to Dissolve.....	58
Section 606.	Procedure after Filing of Statement of Intent to Dissolve .....	59
Section 607.	Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders.....	59

Section 608. Revocation of Voluntary Dissolution Proceedings by Title of Corporation.	60
Section 609. Filing of Statement of Revocation of Voluntary Dissolution Proceedings...	61
Section 610. Effect of Statement of Revocation of Voluntary Dissolution Proceedings ..	61
Section 611. Articles of Dissolution .....	61
Section 612. Filing of Articles of Dissolution.....	62
Section 613. Involuntary Dissolution .....	62
Section 614. Action for Dissolution. ....	63
Section 615. Jurisdiction of Court to Liquidate Assets and Business of Corporation.....	64
Section 616. Procedure in Liquidation of Corporation by Court .....	65
Section 617. Survival of Remedy after Dissolution .....	66
<b>CHAPTER SEVEN FOREIGN CORPORATIONS.....</b>	<b>68</b>
Section 701. Admission of Foreign Corporation.....	68
Section 702. Powers of Foreign Corporation .....	69
Section 703. Corporate Name of Foreign Corporation.....	69
Section 704. Change of Name by Foreign Corporation.....	70
Section 705. Application for Certificate of Authority .....	70
Section 706. Filing of Application for Certificate of Authority.....	71
Section 707. Effect of Certificate of Authority .....	72
Section 708. Registered Office and Registered Agent of Foreign Corporation .....	72
Section 709. Change of Registered Office or Registered Agent of Corporation .....	72
Section 710. Service of Process on Foreign Corporation .....	73
Section 711. Amendment to Articles of Incorporation of Foreign Corporation .....	74
Section 712. Merger of Foreign Corporation Authorized to Transact Business in this Jurisdiction.....	74
Section 713. Amended Certificate of Authority.....	75
Section 714. Withdrawal of Foreign Corporation .....	75
Section 715. Filing of Application for Withdrawal.....	76
Section 716. Revocation of Certificate of Authority .....	76
Section 717. Issuance of Certificate of Revocation.....	77
Section 718. Transacting Business without Certificate of Authority .....	78
<b>CHAPTER EIGHT ANNUAL REPORTS.....</b>	<b>79</b>
Section 801. Annual Report of Domestic and Foreign Corporations .....	79
Section 802. Filing of Annual Report of Domestic and Foreign Corporations.....	80
<b>CHAPTER NINE FEES, FRANCHISE FEES, AND CHARGES.....</b>	<b>81</b>
Section 901. Fees, Franchise Fees and Charges to be Collected by Commission.....	81

Section 902.	Fees for Filing Documents and Issuing Certificates .....	81
Section 903.	Miscellaneous Charges .....	82
Section 904.	License Fees Payable by Domestic Corporations .....	83
Section 905.	License Fees Payable by Foreign Corporations .....	83
Section 906.	Franchise Fees Payable by Domestic Corporations .....	84
Section 907.	Franchise Fees Payable by Foreign Corporations .....	85
Section 908.	Assessment and Collection of Annual Franchise Fees.....	85
Section 909.	Rate of Interest Charged on Overdue Payments .....	86
<b>CHAPTER TEN</b>	<b>PENALTIES .....</b>	<b>87</b>
Section 1001.	Penalties Imposed Upon Corporations .....	87
Section 1002.	Penalties Imposed Upon Officers and Directors .....	87
<b>CHAPTER ELEVEN</b>	<b>MISCELLANEOUS PROVISIONS.....</b>	<b>89</b>
Section 1101.	Interrogatories by Commission Director.....	89
Section 1102.	Information Disclosed by Interrogatories .....	89
Section 1103.	Powers of Commission and Commission Director.....	89
Section 1104.	Appeal from Action of Commission or Commission Director .....	89
Section 1105.	Certificates and Certified Copies to be Received in Evidence.....	90
Section 1106.	Forms to be Furnished by Commission Director.....	90
Section 1107.	Greater Voting Requirements.....	91
Section 1108.	Waiver of Notice .....	91
Section 1109.	Action by Shareholders Without a Meeting.....	91
Section 1110.	Unauthorized Assumption of Corporate Powers.....	91
Section 1111.	Application to Foreign and Interstate Commerce .....	91
Section 1112.	Reservation of Power.....	92
Section 1113.	Effect of Invalidity of Part of This Title .....	92
Section 1114.	Consent to District Court Jurisdiction .....	92
Section 1115.	Securities Act of 1933 Applicable.....	92
Section 1116.	Corporations Doing Business at Effective Date of this Title .....	92
Section 1117.	Exemption of Public Service Utility Companies.....	93
<b>CHAPTER TWELVE</b>	<b>NONPROFIT CORPORATIONS.....</b>	<b>95</b>
Section 1201.	Definitions.....	95
Section 1202.	Purposes of a Nonprofit Corporation.....	95
Section 1203.	Incorporators .....	96
Section 1204.	Articles of Incorporation.....	96



Section 1205.	Corporate Name.....	96
Section 1206.	Corporate Capacity and Powers .....	97
Section 1207.	Filing of Articles.....	97
Section 1208.	Amendment of Articles .....	97
Section 1209.	Organizational Meeting .....	97
Section 1210.	Disposition of Assets .....	98
Section 1211.	General Corporate Laws Applicable .....	98
<b>CHAPTER THIRTEEN EFFECTIVE DATE .....</b>		<b>99</b>
Section 1301.	Effective Date.....	99

**TITLE 4**  
**CORPORATIONS**  
**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Short Title**

This title shall be known and may be cited as the “Seminole Nation of Oklahoma Corporation Code.”

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 102. Definitions**

As used in this title, unless the context otherwise requires, the following terms shall be defined as follows:

(a) Attorney General. “Attorney General” means the Attorney General of the Seminole Nation of Oklahoma.

(b) Articles of Incorporation. “Articles of incorporation” means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(c) Authorized Shares. “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(d) Capital Surplus. “Capital surplus” means the entire surplus of a corporation other than its earned surplus.

(e) Commission and Commission Director. “Commission” shall mean the Commission office established pursuant to Title 28 of the Code of Laws of the Seminole Nation of Oklahoma. “Commission Director” shall mean an administrative employee of the Commission serving as the Director of the Commission.

(f) Corporation or Domestic Corporation. “Corporation” or “domestic corporation” means a corporation for profit which is incorporated under or subject to the provisions of this title, at least fifty-one percent (51%) of which is owned by the Seminole Nation or members of the Seminole Nation,

(g) Court or District Court. “Court” or “District Court” means the Nation’s courts or a Court of Indian Offenses (CFR Court) located within the territorial jurisdiction of the Nation.

(h) Earned Surplus. “Earned surplus” means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporations, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to

shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(i) Employee. "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(j) Foreign Corporation. "Foreign corporation" means a corporation for profit, incorporated under a law other than the law of this Nation.

(k) Insolvent. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(l) Jurisdiction. "Jurisdiction" means the territorial jurisdiction of the Seminole Nation of Oklahoma, which is consistent with the geographical boundaries as they existed in 1898 pursuant to the Treaty of March 21, 1866, 14 Stat. 755 entered into by the Seminole Nation and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries owned in fee by the Seminole Nation of Oklahoma or held in trust by the United States on behalf of the Seminole Nation of Oklahoma.

(m) Nation. "Nation" shall mean the Seminole Nation of Oklahoma.

(n) Net Assets. "Net assets" means the amount by which the total assets of a corporation exceed the total debts of a corporation.

(o) Share. "Share" means the unit into which the proprietary interests in a corporation are divided.

(p) Prosecutor. "Prosecutor" means the person responsible for enforcement of criminal laws pursuant to Title 7 of the Code of Laws of the Seminole Nation.

(q) Shareholder. "Shareholder" means the person who is a holder of record of shares in a corporation. If the articles of incorporation or the by-laws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth:

- (1) The classification of shareholder who may certify;
- (2) The purpose or purposes for which the certification may be made;
- (3) The form of certification and information to be contained therein;

- (4) If the certification is with respect to a record date or closing of the stock transfer books, the time after the record within which the certification must be received by the corporation; and
  - (5) Such other provisions with respect to the procedure as are deemed necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.
- (r) Stated Capital. “Stated capital” means, at any particular time, the sum of:
- (1) The par value of all shares of the corporation having a par value that have been issued;
  - (2) The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and
  - (3) Such amounts not included in clauses (1) and (2) of this paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been affected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees, franchise taxes and other charges imposed by Title 4 herein.
- (s) Subscriber. “Subscriber” means a person who subscribes for shares in a corporation whether before or after incorporation.
- (t) Surplus. “Surplus” means the excess of the net assets of a corporation over its stated capital.
- (u) Treasury Shares. “Treasury shares” means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be “issued” shares, but not “outstanding” shares.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 103. Purposes**

A corporation may be organized under Title 4 herein for any lawful purpose or purposes, except for the purpose of banking or insurance.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 104. General Powers**

Each corporation shall have power:

- (a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
- (b) To sue and be sued, complain and defend, in its corporate name.
- (c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (d) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.
- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (f) To lend money and use its credit to assist its employees.
- (g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with shares or other interests in, or obligations of other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.
- (h) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgages or pledge of all or any of its property, franchises or investments.
- (i) To conduct its business, carry on its operations and have offices and exercise the powers granted by Title 4 herein, within or without the jurisdiction of the Nation.
- (j) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (k) To elect directors and appoint officers, employees and agents of the corporation, define their duties, and fix their compensation.

(l) To make and amend by-laws, not inconsistent with its articles of incorporation or with the laws of the Seminole Nation of Oklahoma, for the management of the business and regulation of the affairs of the corporation.

(m) To make donations for the public welfare or for charitable, scientific or education purposes.

(n) To transact any lawful business which the board of directors shall find will be in aid of governmental policy.

(o) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

(p) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other enterprise.

(q) To have and exercise all powers necessary or convenient to affect its purpose.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 105. Indemnification of Officers, Directors, Employees and Agents**

(a) Indemnification Allowed in Actions Other than those by/or in the Right of the Corporation. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) Indemnification Allowed in Actions by/or in the Right of the Corporation. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and

reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled no indemnity for such expenses which such court shall deem proper.

(c) Indemnification for Expenses Related to Successful Defense. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) or (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Determination by Board that Indemnification Proper. Any indemnification under subsections (a) or (b), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) or (b). Such determination shall be made:

- (1) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or
- (2) If such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or
- (3) By the shareholders.

(e) Undertaking for Advance Defense Expenses. Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in subsection (d) upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(f) Indemnification Not Exclusive of Other Rights. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Liability Insurance. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee

or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 106. Right of Corporation to Acquire and Dispose of Its Own Shares**

A corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor. To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed to that extent. Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

- (a) Eliminating fractional shares;
- (b) Collecting or compromising indebtedness to the corporation;
- (c) Paying dissenting shareholders entitled to payment for their shares under the provisions of Title 4 herein;
- (d) Effecting, subject to the other provisions of Title 4 herein, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 107. Defense of Ultra Vires**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted in the following circumstances:

- (a) Lack of capacity or power may be asserted in a proceeding by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be



equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) Lack of capacity or power may be asserted in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) Lack of capacity or power may be asserted in a proceeding by the Attorney General as provided in Title 4 herein, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 108. Corporate Names**

(a) The corporate name shall contain the word “corporation, “company,” “incorporated,” or “limited,” or shall contain an abbreviation of one of such words.

(b) The corporate name shall not contain any word or phrases which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(c) The corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this Nation or any foreign corporation authorized to transact business in the Nation’s jurisdiction, or a name the exclusive right to which is, at the time, reserved in the manner provided in Title 4 herein, or the name of a corporation which has in effect a registration of its corporate name as provided in said Title, except that this provision shall not apply if the applicant files with the Commission either of the following:

- (1) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this jurisdiction.

(d) The corporate name shall not be the same as, or deceptively similar to, the name of any corporation organized, domesticated, or reserved under the laws of the State of Oklahoma, subject to the exceptions (1) and (2) of subparagraph (c) of this Section.

(e) A corporation with which another corporation domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation domestic or foreign, including its name, may have the same name as that used in this jurisdiction by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this jurisdiction.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 109. Reserved Name**

(a) Right to Reserve Name. The exclusive right to the use of a corporate name may be reserved by:

- (1) Any person intending to organize a corporation under Title 4 herein;
- (2) Any domestic corporation intending to change its name;
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this jurisdiction;
- (4) Any foreign corporation authorized to transact business in this jurisdiction and intending to change its name; or
- (5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this jurisdiction.

(b) Application for Name Reservation. The reservation shall be made by filing with the Commission an application to reserve a specified corporate name, executed by the applicant. If the Commission Director finds that the name is available for corporate use, he shall reserve the name for the exclusive use of the applicant for a period of one hundred and twenty days. The right to the exclusive use of a specified corporate name so reserved may be transferred to any person or corporation by filing in the office of the Commission a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 110. Registration of Name**

Any corporation organized and existing under the laws of any state, Nation, or territory of the United States may register its corporate name under this Act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Seminole Nation, or the name of any foreign corporation authorized to transact business in this jurisdiction, or any corporate name reserved or registered under this Act. Such registration shall be made in compliance with the following two requirements:

(a) Filing with the Commission:

- (1) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation; the state, Nation, or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engages; and
- (2) A certificate setting forth that such corporation is in good standing under the laws of the state, Nation, or territory wherein it is organized, executed by the proper state or territorial authority or by the Commission Director, or by such other official as may have custody of the records pertaining to corporations.

(b) Paying to the Commission a registration fee in a total amount equivalent to Five Dollars (\$5.00) for each month, or fraction thereof, between the date of filing such application and December 31st of the calendar year in which such application is filed. Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 111. Renewal of Registered Name**

A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of Twenty Five Dollars (\$25.00). A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 112. Registered Office and Registered Agent**

Each corporation shall have and continuously maintain within the jurisdiction of the Nation:

- (a) A registered office which may be, but need not be, the same as its place of business.
- (b) A registered agent, which agent may be either an individual resident of this reservation whose business office is identical with such registered office, or a domestic corporation or a foreign corporation authorized to transact business in this jurisdiction having a business office identical with such registered office.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 113. Change of Registered Office or Registered Agent**

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Commission a statement setting forth:

- (a) The name of the corporation;
- (b) The address of its then registered office;
- (c) If the address of its registered office is to be changed, the address to which the registered office is to be changed;
- (d) The name of its then registered agent;
- (e) If its registered agent is to be changed, the name and address of its successor registered agent;
- (f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;
- (g) That such change was authorized by resolution duly adopted by its board of directors. Such statement shall be executed by the corporation by its president, or vice president, and verified by him, and delivered to the Commission. If the Commission finds that such statement conforms to the provisions of this Title, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Commission, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commission. If a registered agent changes his or its business address to another place within the Nation, he or it may change such address and the address of the registered office of any corporation of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (e) or (g) and must recite that a copy of the statement has been mailed to the corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 114. Service of Process**

The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Whenever a corporation shall fail to appoint or maintain a registered agent within the Nation, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Commission Director shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commission Director of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk or other tribal employee having charge of the corporation

department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Commission Director, he shall immediately cause one of the copies thereof to be mailed, addressed to the corporation at its registered office. Any service so had on the Commission Director shall be returnable in not less than thirty days. The Commission Director shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 115. Authorized Shares**

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this Title. Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

- (a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;
- (b) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends;
- (c) Having preference over any other class or classes of shares as to the payment of dividends;
- (d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;
- (e) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted or the amount of such deficiency is transferred from surplus to stated capital.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 116. Issuance of Shares of Preferred or Special Classes in Series**

(a) Division of Classes into Series Authorized by Articles of Incorporation. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as the following relative rights and preferences, as to which there may be variations between different series:

- (1) The rate of dividend;
- (2) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;
- (3) The amount payable upon shares in the event of voluntary and involuntary liquidation;
- (4) Sinking fund provisions, if any, for the redemption or purchase of shares;
- (5) The terms and conditions, if any, on which shares may be converted; and
- (6) Voting rights if any.

(b) Division of Classes into Series by Board of Directors; Authority. If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(c) Division of Classes into Series by Board of Directors; Resolution and Statement Required. In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation. Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Commission a statement setting forth:

- (1) The name of the corporation;
- (2) A copy of their resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;
- (3) The date of adoption of such resolution; and

(4) That such resolution was duly adopted by the board of directors.

(d) Execution and Approval of Statement. Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall be delivered to the Commission. If the Commission Director finds that such statement conforms to law, he shall, when all franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Return the other duplicate original to this corporation or its representative.

(e) Resolution Effective upon Filing of Statement. Upon the filing of such statement by the Commission, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 117. Subscriptions for Shares**

A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription. Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The by-laws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 118. Consideration for Shares**

Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors. Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon. Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors. That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares. In the event of the issuance of shares upon the conversion or exchange of indebtedness or shares, consideration shall be deemed to be:

- (a) The principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted; and
- (b) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and
- (c) Any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 119. Payment for Shares**

The consideration for the issuance of shares may be paid, in whole or in part, in cash, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and non-assessable. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of a corporation. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 120. Stock Rights and Options**

Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at



which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved or ratified by such a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 121. Determination of Amount of Stated Capital**

In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus. In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the allocation received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference. If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this Title of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired. The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 122. Expenses of Organization, Reorganization, and Financing**

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 123. Certificates Representing Shares**

The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series. Each certificate representing shares shall state upon the face thereof:

- (a) That the corporation is organized under the laws of the Seminole Nation of Oklahoma;
- (b) The name of the person to whom issued;
- (c) The number and class of shares, and the designation of the series, if any, which such certificate represents; and
- (d) The par value of each share represented by such certificate, or a statement that the shares are without par value. No certificate shall be issued for any share until such share is fully paid.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 124. Fractional Shares**

A corporation may:

- (a) Issue fractions of a share;
- (b) Arrange for the disposition of fractional interests by those entitled thereto;
- (c) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(d) Issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of the scrip, or subject to any other conditions which the board of directors may deem advisable.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 125. Liability of Subscribers and Shareholders**

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or were to be issued. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 126. Shareholders' Preemptive Rights**

The shareholders of a corporation shall have no preemptive right to acquire unissued or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the extent, if any, that such right is provided in the articles of incorporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 127. By-Laws**

(a) Adoption of By-laws. The initial by-laws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the by-laws or adopt new by-laws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

(b) Filing of By-Laws. The corporate by-laws, and any alteration, amendments, or repeal thereof, shall be filed in duplicate with the Commission who shall, upon payment of the

filing fee, endorse thereon the word "Filed" and the month, day, and year of the filing thereof. The Commission shall file one of the duplicate originals in his office and return the other duplicate original to the corporation or its representative. The by-laws, and any alteration, amendment, or repeal thereof shall be effective from and after the date of filing unless a later effective date is conspicuously and expressly stated in the instrument filed.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 128. Meetings of Shareholders**

Meetings of shareholders may be held at such place within or without this jurisdiction as may be stated in or fixed in accordance with the by-laws. If no other place is stated or so fixed, meetings shall be held at the registered office of the corporation. An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the by-laws. If the annual meeting is not held within any thirteen-month period the District Court may, on the application of any shareholder, summarily order a meeting to be held. A special meeting of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the by-laws.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 129. Notice of Shareholders' Meetings**

Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 130. Closing of Transfer Books and Fixing Record Date**

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the by-laws, or in the absence of an applicable by-law the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no

record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 131. Voting Record**

The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 132. Quorum of Shareholders**

Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no even shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this Title or the articles of incorporation or by-laws.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 133. Voting of Shares**

(a) One Vote per Share. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this Title to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast. Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(b) **Vote in Person or by Proxy.** A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

(c) **Voting Shares in Elections of Directors.** Unless the articles of incorporation otherwise provide, at each election for directors, every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by the distributing such votes on the same principle among any number of such candidates. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the by-laws of such other corporation may prescribe or, in the absence of such provision, as the board of directors of such other corporation may determine.

(d) **Votes of Shares Held by an Administrator, Executor, Guardian or Conservator.** Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him either in person or by proxy, but no trustee shall be entitled to vote shares held by him without transfer of such shares into his name.

(e) **Votes of Shares in Name of Receiver.** Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(f) **Votes of Pledged Shares.** A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 134. Voting Trusts and Agreements among Shareholders**

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and

addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose. Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 135. Board of Directors**

The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise provided in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this Title shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this jurisdiction or the reservation or shareholders of the corporation unless the articles of incorporation or by-laws so require. The articles of incorporation or by-laws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 136. Number and Election of Directors**

The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the by-laws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided, in, the articles of incorporation or the by-laws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a by-law providing for the number of directors, the number shall be the same as that provided for the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 137. Classification of Directors**

When the board of directors shall consist of nine or more members, in lieu of election the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 138. Vacancies**

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 139. Removal of Directors**

At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or if there be classes of directors, at an election of the class of directors of which he is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 140. Quorum of Directors**

A majority of the number of directors fixed by or in the manner provided in the by-laws or, in the absence of a by-law fixing or providing for the number of directors, then of the number of



directors stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the by-laws.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 141. Director Conflicts of Interest**

No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable to the corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 142. Executive and Other Committees**

If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or the by-laws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the by-laws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 143. Place and Notice of Directors' Meetings; Committee Meetings**

(a) Notice of Meetings. Meetings of the board of directors, regular or special may be held either within or without this jurisdiction. Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors or any committee designated thereby shall be held upon such notice as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated, thereby need be specified in the notice of waiver of notice of such meeting unless required by the by-laws.

(b) Participation in Meeting by Conference Call. Except as may be otherwise restricted by the articles of incorporation or by-laws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 144. Action by Directors without a Meeting**

Unless otherwise provided by the articles of incorporation or by-laws, any action required by this Title to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 145. Dividends**

The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restriction contained in the articles of incorporation, subject to the following provisions:

(a) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation or out of the unreserved and unrestricted net earnings of the current fiscal year and the next preceding fiscal year taken as a single period, except as otherwise provided in this section.

(b) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(c) Dividends may be declared and paid in its own treasury shares.

(d) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

- (1) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.
- (2) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(e) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 146. Distributions from Capital Surplus**

The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the

outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof. The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution when made shall be identified as a payment of cumulative dividends out of capital surplus.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 147. Loans to Employees and Directors**

A corporation shall not lend money to or use its corporation to assist its directors without authorization in the particular case by its shareholders, but may lend money to and use its credit to assist any employee of the corporation or of a subsidiary, including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 148. Liability of Directors in Certain Cases**

In addition to any other liabilities imposed by law upon directors of a corporation:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Title or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Title or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Title shall be jointly and severally liable to the corporation for

the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this Title.

(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are to thereafter paid and discharged. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director shall not be liable under (a), (b), or (c) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value. Any director against whom a claim be asserted under or pursuant to this section for the payment of dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this Act, in proportion to the amount received by them. Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 149. Provisions Relating to Actions by Shareholders**

(a) Standing to Sue. No action shall be brought in this jurisdiction by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificate thereafter devolved upon him by operation of law from a person who was a holder of record at such time. In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

(b) Security in Certain Cases. In any action instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of such corporation or of voting trust certificates so held

having a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action was brought without reasonable cause.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 150. Officers**

The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the by-laws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the by-laws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the by-laws. Any two or more offices may be held by the same person, except the offices of president and secretary. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the by-laws.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 151. Removal of Officers**

Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 152. Books and Records**

(a) Types of Records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(b) Inspection of Records. Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose its relevant books and records of accounts, minutes, and record of shareholders and to make extracts therefrom.

(c) Liability for Refusal to Permit Inspection of Records. Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, as described in subsection (b) herein, to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by such shareholder, or in respect of which such voting shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

(d) Court Ordered Production of Records. Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him to compel the production for examination by such shareholder or holder of voting trust certificates of the books and records of account, minutes and record of shareholders of a corporation. Upon the written request of any shareholder or holder of voting trust certificates for shares of a corporation, the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER TWO**

### **FORMATION OF CORPORATIONS**

#### **Section 201. Incorporators**

One or more persons, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing and delivering in duplicate to the Commission articles of incorporation for such corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 202. Articles of Incorporation**

The articles of incorporation shall set forth:

- (a) The name of the corporation;
- (b) The period of duration, which may be perpetual;
- (c) The purpose or purposes for which the corporation is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Title;
- (d) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;
- (e) If the shares are to be divided into classes the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
- (f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (g) If any preemptive right is to be granted to shareholders, provisions therefor;
- (h) Any provision not inconsistent with law, for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this Title is required or permitted to be set forth in the by-laws.
- (i) The address of its initial registered office, and the name of its initial registered agent at such address;



(j) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify; and

(k) The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 203. Filing of Articles of Incorporation**

Duplicate originals of the articles of incorporation shall be delivered to the Commission. If the Commission Director finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this Title prescribed:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;

(b) File one of such duplicate originals in his office;

(c) Issue a certificate of incorporation to which he shall affix the other duplicate original; and

(d) Return the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Commission Director, to the incorporators or their representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 204. Effective Date of Issuance of Certificate of Incorporation**

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been compiled with and that the corporation has been incorporated under this Title, except as against the Nation in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 205. Organization Meeting of Directors**

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this jurisdiction at the call of majority of the directors named in the articles of incorporation for the purpose of adopting by-laws, electing officers and transacting such other business as may come

before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, stating the time and place of the meeting.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER THREE**

### **AMENDMENT OF ARTICLES OF INCORPORATION**

#### **Section 301. Right to Amend Articles of Incorporation**

A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (a) To change its corporate name;
- (b) To change its period of duration;
- (c) To change, enlarge or diminish its corporate purposes;
- (d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue;
- (e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;
- (f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;
- (g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;
- (h) To change shares having the par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;
- (i) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;
- (j) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized whether issued or unissued;
- (k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(o) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

(p) To limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 302. Procedure to Amend Articles of Incorporation**

Amendments to the articles of incorporation shall be made in the following manner:

(a) **Resolution for Vote on Amendments.** The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

(b) **Written Notice.** Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Title for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) **Vote.** At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each

class of shares entitled to vote thereon. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 303. Class Voting on Amendments**

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

- (a) Increase or decrease the aggregate number of authorized shares of such class;
- (b) Increase or decrease the par value of the shares of such class;
- (c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class;
- (d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;
- (e) Change the designations, preferences, limitations, or relative rights of the shares of such class;
- (f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;
- (g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares, of any class having the rights and preferences prior or superior to the shares of such class;
- (h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so;
- (i) Limit or deny any existing preemptive rights of the shares of such class; or
- (j) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 304. Articles of Amendment**

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

- (a) The name of the corporation;
- (b) The amendments so adopted;
- (c) The date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued;
- (d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;
- (e) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect;
- (f) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and
- (g) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is affected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 305. Filing of Articles of Amendment**

Duplicate originals of the articles of amendment shall be delivered to the Commission. If the Commission Director finds that the articles of amendment conform to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (a) Endorse on each of such duplicate originals the word “Filed,” and the month, day and year of the filing thereof;
- (b) File one of such duplicate originals in his office;
- (c) Issue a certificate of amendment to which he shall affix the other duplicate original;  
and
- (d) Return the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Commission Director, to the corporation or its representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 306. Effect of Certificate of Amendment**

Upon the issuance of the certificate of amendment by the Commission Director, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 307. Restated Articles of Incorporation**

A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors. Upon the adoption of such resolution, the restated articles of incorporation shall be signed by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such articles and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto. Duplicate originals of the restated articles of incorporation shall be delivered to the Commission. If the Commission Director finds that such restated articles of incorporation conform to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (a) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (b) File one of such duplicate originals in his office;
- (c) Issue a restated certificate of incorporation, to which he shall affix the other duplicate original; and
- (d) Return the restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the Commission Director, to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the Commission Director, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 308. Proceedings**

Amendment of articles of incorporation in reorganization

(a) Authorization to Amend. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings of the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(b) Purposes of Amendments. In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- (1) Change the corporate name, period of duration or corporate purposes of the corporation;
- (2) Repeal, alter or amend the by-laws of the corporation;
- (3) Change the aggregate number of shares or any class, which the corporation has authority to issue;
- (4) Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;
- (5) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not, convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and
- (6) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(c) Manner of Amending. Amendments to the articles of incorporation pursuant to this Section shall be made, upon submission of the amendments to the Commission, in the following manner:

- (1) The Commission Director shall endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) The Commission Director shall file one of such duplicate originals in his office with the certified copy of the decree;
- (3) The Commission Director shall issue a certificate of amendment to which he shall affix the other duplicate original; and



- (4) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Commission Director, shall be returned to the corporation or its representative.

(d) **Effective Date of Amendment.** Upon the issuance of the certificate of amendment by the Commission Director, the amendments shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 309. Restriction on Redemption or Purchase of Redeemable Shares**

No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 310. Cancellation of Redeemable Shares by Redemption or Purchase**

(a) **Effect of Redemption or Purchase.** When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(b) **Statement of Cancellation.** The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, and shall set forth:

- (1) The name of the corporation;
- (2) The number of redeemable shares canceled through redemption or purchase, itemized by classes and series;
- (3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation; and
- (4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(c) Reissuance of Shares. If the articles of incorporation provide that the canceled shares shall not be reissued, the number of shares shall not be reissued, and the statement of cancellation shall state the number of shares which the corporation will have authority to issue itemized by classes and series, after giving effect to such cancellation.

(d) Approval and Filing of Statement. Duplicate originals of such statement shall be delivered to the Commission Director. If the Commission Director finds that such statement conforms to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Return the other duplicate original to the corporation or its representative.

(e) Effect of Filing Statement. Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by the shares so canceled. Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 311. Cancellation of Other Reacquired Shares**

(a) Authority to Cancel. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and, in such event, a statement of cancellation shall be filed as provided in this section.

(b) Statement. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (1) The name of the corporation;
- (2) The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption.
- (3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;
- (4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation; and

- (5) If the articles of incorporation provide that the canceled shares shall not be reissued, the number of shares which the corporation will have authority to issue, itemized by classes and series, after giving effect to such cancellation.

(c) **Approval and Filing of Statement.** Duplicate originals of such statement shall be delivered to the Commission Director. If the Commission Director finds that such statement conforms to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "File," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Return the other duplicate original to the corporation or its representative.

(d) **Effect of Filing of Statement.** Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares. Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 312. Reduction of Stated Capital in Certain Cases**

(a) **Method of Reduction.** A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

- (1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.
- (2) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Title for the giving of notice of meetings of shareholders.
- (3) At such meeting, a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated

capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(b) Statement. When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (1) The name of the corporation;
- (2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption;
- (3) The number of shares outstanding and the number of shares entitled to vote thereon;
- (4) The number of shares voted for and against such reduction, respectively; and
- (5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

(c) Approval and Filing of Statement. Duplicate originals of such statement shall be delivered to the Commission. If the Commission Director finds that such statement conforms to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Return the other duplicate original to the corporation or its representative.

(d) Effect of Filing Statement. Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth. No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 313. Special Provisions Relating to Surplus and Reserves**

(a) Surplus. The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus. The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus. A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall to the extent thereof, effect a reduction of capital surplus.

(b) Reserve. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER FOUR MERGER AND CONSOLIDATION**

### **Section 401. Procedure for Merger**

Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of a merger approved in the manner provided in this Title. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

- (a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;
- (b) The terms and conditions of the proposed merger;
- (c) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;
- (d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and
- (e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 402. Procedure for Consolidation**

Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Title. The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

- (a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;
- (b) The terms and conditions of the proposed consolidation;
- (c) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any corporation or, in whole or in part, into cash or other property;
- (d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Title; and

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 403. Approval by Shareholders**

(a) Notice of Meeting to Consider Merger or Consolidation. The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the matter provided in this Title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or consolidation, as the case may be, shall be included in or enclosed with such notice.

(b) Shareholder Approval of Merger or Consolidation. At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger, or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class. After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 404. Articles of Merger or Consolidation**

(a) Articles of Merger or Articles of Consolidation. Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

- (1) The plan of merger or the plan of consolidation;
- (2) As to each corporation, the number of shares outstanding, and if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

- (3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class the number of shares of each class voted for and against such plan, respectively.

(b) Approval and Filing of Articles. Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Commission Director. If the Commission Director finds that such articles conform to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office;
- (3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original; and
- (4) Return the certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the Commission Director, to the surviving or new corporation, as the case may be, or its representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 405. Merger of Subsidiary Corporation**

(a) Authority. Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation.

(b) Approval of Plan. The corporation shall, by resolution, approve a plan of merger setting forth:

- (1) The name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares, which is hereinafter designated as the surviving corporation; and
- (2) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(c) Copy of Plan. A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.



(d) Articles of Merger. Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

- (1) The plan of merger;
- (2) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and
- (3) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(e) Approval and Filing of Articles. On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the Commission. If the Commission Director finds that such articles conform to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Issue a certificate of merger to which he shall affix the other duplicate original;
- (4) Return the certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the Commission Director, to the surviving corporation or its representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 406. Effect of Merger of Consolidation**

Upon the issuance of the certificate of merger or the certificate of consolidation by the Commission Director, the merger or consolidation shall be effected. When such merger or consolidation has been effected:

(a) The several corporations which were parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations party to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Title.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choices in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this Title shall be deemed to be the original articles of incorporation of the new corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 407. Merger or Consolidation of Domestic and Foreign Corporations**

One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state, Nation, or country under which each such foreign corporation is organized:

(a) Compliance with Applicable Law of the Nation and Applicable Law of the Foreign Corporation's State of Incorporation. Each domestic corporation shall comply with the provisions of this Title with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) Compliance with Nation's Laws Concerning Foreign Corporations. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state, Nation, or country other than the Seminole Nation of Oklahoma, it shall comply with the provisions of this Title with respect to foreign corporations if it is to transact business in this jurisdiction, and in every case it shall file with the Commission:

- (1) An agreement that it may be served with process in this jurisdiction in any proceeding for the enforcement of any obligations of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;
- (2) An irrevocable appointment of the Commission Director of this Nation as its agent to accept service of process in any proceeding; and
- (3) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Title with respect to the rights of dissenting shareholders.

(c) Effect of Merger or Consolidation. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this jurisdiction. If the surviving or new corporation is to be governed by the laws of any state, Indian Nation, or country other than the Seminole Nation of Oklahoma, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state, Indian Nation, or country provide otherwise. At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER FIVE SALE OF ASSETS**

### **Section 501. Sale of Assets in Regular Course of Business and Mortgage or Pledge of Assets**

The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation, whether or not in the usual and regular course of business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case no authorization or consent of the shareholders shall be required.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 502. Sale of Assets Other Than in Regular Course of Business**

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) Resolution. The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Notice. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this Title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(c) Shareholders Vote. At such meeting the shareholders, may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(d) Board May Abandon Disposition. After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease,

exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 503. Right of Shareholders to Dissent**

(a) Shareholder Right to Dissent. Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

- (1) Any plan of merger or consolidation to which the corporation is a party; or
- (2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale.

(b) Dissent as to Less Than All Shares of Shareholder. A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(c) Inapplicability of Section. This section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger. Nor shall it apply to the holders of shares of any class or series if the shares of such class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 504. Rights of Dissenting Shareholders**

(a) Written Objection to Proposed Corporate Action. Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action.

(b) Written Demand for Payment of Fair Value of Share. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten days after the date on which the vote was taken or if a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders may, within fifteen days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or

consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholders' shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholders upon surrender of the certificate or certificates representing such shares, in the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the applicable ten-day or fifteen-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

(c) **Submission of Share Certificates Required.** Within twenty days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless the court, for good and sufficient cause shown, shall otherwise direct.

(d) **Withdrawal of Demand.** No demand made pursuant to § 504(b) herein may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by the court shall have been made or filed within the time provided in this section, or if the court shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

(e) **Written Notice and Offer to Dissenting Shareholder.** Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet. If within thirty days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefore shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

(f) **Effect of Transfer of Shares.** If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear

similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof. Shares acquired by a corporation may be held and disposed of as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

(g) District Court Action for Determination of Fair Value of Shares. If within such period of thirty days a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in the District Court requesting that the fair value of such shares be found and determined. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. The action shall proceed in accordance with the requirements of Section 505 herein.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 505. Procedures for District Court Action for Determination of Fair Value of Shares**

An action filed by a corporation or dissenting shareholder pursuant to Section 504 herein shall proceed as follows:

(a) Service of Petition. A copy of the petition shall be served on each dissenting shareholder who is a resident of this jurisdiction and shall be served by registered or certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law.

(b) Jurisdiction of District Court. The jurisdiction of the court shall be plenary and exclusive.

(c) Parties. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares.

(d) Appointment of Appraisers. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) Judgment. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares. The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(f) Costs and Expenses. The costs and expense of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]



## **CHAPTER SIX DISSOLUTION**

### **Section 601. Voluntary Dissolution by Incorporators**

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(a) Articles of Dissolution. Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:

- (1) The name of the corporation;
- (2) The date of issuance of its certificate of incorporation;
- (3) That none of its shares has been issued;
- (4) That the corporation has not commenced business;
- (5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
- (6) That no debts of the corporation remain unpaid; and
- (7) That a majority of the incorporators elect that the corporation be dissolved.

(b) Approval and Filing of Articles. Duplicate originals of the articles of dissolution shall be delivered to the Commission. If the Commission Director finds that the articles of dissolution conform to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office;
- (3) Issue a certificate of dissolution to which he shall affix the other duplicate original; and
- (4) Return the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Commission Director, to the incorporators or their representative.

(c) Effect of Filing. Upon the issuance of such certificate of dissolution by the Commission Director, the existence of the corporation shall cease.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 602. Voluntary Dissolution by Consent of Shareholders**

(a) Authority to Dissolve. A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(b) Statement of Intent to Dissolve. Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall be set forth:

- (1) The name of the corporation;
- (2) The names and respective addresses of its officers;
- (3) The names and respective addresses of its directors;
- (4) A copy of the written consent signed by all shareholders of the corporation; and
- (5) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 603. Voluntary Dissolution by Title of Corporation**

A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(a) Resolution. The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written Notice. Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(c) Shareholder Vote. At such meeting, a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon.

(d) Statement of Intent to Dissolve. Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation;
- (2) The names and respective addresses of its officers;
- (3) The names and respective addresses of its directors;
- (4) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;
- (5) The number of the shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
- (6) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 604. Filing and Approval of Statement of Intent to Dissolve**

(a) Delivery to Commission. Duplicate originals of the statement of intent to dissolve submitted pursuant to § 602 or 603 herein, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commission.

(b) Approval and Filing. If the Commission Director finds that such statement conforms to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Return the other duplicate original to the corporation or its representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 605. Effect of Statement of Intent to Dissolve**

Upon the filing by the Commission Director of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Commission

Director or until a decree dissolving the corporation has been entered by the District Court as in this Title provided.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 606. Procedure after Filing of Statement of Intent to Dissolve**

After the filing by the Commission Director of a statement of intent to dissolve:

(a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation;

(b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and

(c) The corporation, at any time during the liquidation of its business and affairs, may make application to the court to have the liquidation continued under the supervision of the court as provided in this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 607. Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders**

(a) Written Consent. By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commission Director, revoke voluntary dissolution proceedings theretofore taken.

(b) Statement of Revocation of Voluntary Dissolution Proceedings. Upon the execution of written consent to revoke voluntary dissolution proceedings, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation;
- (2) The names and respective addresses of its officers;
- (3) The names and respective addresses of its directors;
- (4) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and

- (5) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 608. Revocation of Voluntary Dissolution Proceedings by Title of Corporation**

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commission Director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(a) Resolution. The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(b) Written Notice. Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Title for the giving of notice of special meetings of shareholders.

(c) Shareholder Vote. At such meeting, a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(d) Statement of Revocation of Voluntary Dissolution Proceedings. Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation;
- (2) The names and respective addresses of its officers;
- (3) The names and respective addresses of its directors;
- (4) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;
- (5) The number of shares outstanding; and
- (6) The number of shares voted for and against the resolution, respectively.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 609. Filing of Statement of Revocation of Voluntary Dissolution Proceedings**

(a) Delivery to Commission. Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by an act of the corporation, shall be delivered to the Commission.

(b) Approval and Filing of Statement of Revocation. If the Commission Director finds that such statement conforms to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in the office; and
- (3) Return the other duplicate original to the corporation or its representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 610. Effect of Statement of Revocation of Voluntary Dissolution Proceedings**

Upon the filing by the Commission Director of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 611. Articles of Dissolution**

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation;
- (b) That the Commission Director has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed;
- (c) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor; or
- (d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

(e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 612. Filing of Articles of Dissolution**

(a) Delivery of Articles of Dissolution. Duplicate originals of such articles of dissolution shall be delivered to the Commission Director.

(b) Approval and Filing of Articles of Dissolution. If the Commission Director finds that such articles of dissolution conform to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office;
- (3) Issue a certificate of dissolution to which he shall affix the other duplicate original; and
- (4) Return the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Commission Director, to the representative of the dissolved corporation.

(c) Effect of Filing. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suites, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 613. Involuntary Dissolution**

A corporation may be dissolved involuntarily by a decree of the court in an action filed by the Attorney General when it is established that:

(a) The corporation has failed to file its annual report within the time required by this Title, or has failed to pay its franchise fee on or before the first day of August of the year in which such franchise fee becomes due and payable; or

(b) The corporation procured its articles of incorporation through fraud;

(c) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(d) The corporation has failed for thirty days to appoint and maintain a registered agent within the Nation's jurisdiction; or

(e) The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the Commission a statement of such change.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 614. Action for Dissolution**

(a) Certification to Attorney General. The Commission Director on or before the last day of December shall certify to the Attorney General the names of all corporations which have failed to file their annual reports or to pay franchise fees in accordance with the provisions of this Title, together with the facts pertinent thereto. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this Title, together with the facts pertinent thereto. Whenever the Commission Director shall certify the name of a corporation to the Prosecutor as having given any cause for dissolution, the Commission Director shall concurrently mail to the corporation at its registered office a notice that such certification has been made.

(b) Action for Dissolution. Upon the receipt of such certification, the Attorney General shall file an action in the name of the Nation against such corporation for its dissolution.

(c) Certificate as Prima Facie Evidence. Every such certificate from the Commission Director to the Attorney General pertaining to the failure of a corporation to file an annual report or pay a franchise fee shall be taken and received in all courts as prima facie evidence of the facts therein stated.

(d) Avoidance of Action for Dissolution. If, before action is filed, the corporation shall file its annual report or pay its franchise fee, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Title, or shall file with the Commission Director the required statement of change of registered office or registered agent such fact shall be forthwith certified by the Commission Director to the Prosecutor and he shall not file an action against such corporation for such cause.

(e) Abatement of Cause of Action. If, after action is filed, the corporation shall file its annual report or pay its franchise fee, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Title, or shall file with the Commission Director the required statement of change of registered office or registered agent, and shall pay the costs of such action, the action for such cause shall abate.

(f) Jurisdiction; Process. Every action for the involuntary dissolution of a corporation shall be commenced by the Attorney General in the District Court. Summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in a legal newspaper, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie



evidence thereof. Such notice shall be published once, and publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the publication of such notice.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 615. Jurisdiction of Court to Liquidate Assets and Business of Corporation**

(a) Action by Shareholder. The District Court shall have full power to liquidate the assets and business of a corporation in an action by a shareholder when it is established:

- (1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
- (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
- (3) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
- (4) That the corporate assets are being misapplied or wasted.

(b) Action by Creditor. The District Court shall have full power to liquidate the assets and business of a corporation in an action by a creditor:

- (1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
- (2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Application by Corporation. The District Court shall have full power to liquidate the assets and business of a corporation upon application by a corporation which has filed a statement of intent to dissolve, as provided in this Title, to have its liquidation continued under the supervision of the court.

(d) Action by Attorney General for Dissolution. The District Court shall have full power to liquidate the assets and business of a corporation when an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(e) Parties. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 616. Procedure in Liquidation of Corporation by Court**

(a) Powers of Court. In proceedings to liquidate the assets and business of a corporation, the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such power and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(b) Appointment of Receiver. After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares.

(c) Qualifications of Receivers. A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this jurisdiction, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

(d) Authority of Receiver. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

(e) Allowance of Compensation. The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(f) Filing of Claims in Liquidation Proceedings. In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date

so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court from participating in the distribution of the assets of the corporation.

(g) Discontinuance of Liquidation Proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

(h) Decree of Involuntary Dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

(i) Filing of Decree of Dissolution. In the case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Commission for the filing thereof.

(j) Deposit with Nation's Treasurer of Amount Due Certain Shareholders. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Nation's Treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the Nation's Treasurer of his right thereto. The Nation's Treasurer shall, in such cases, open and maintain a trust account at any federal bank within this Seminole County or within the counties adjacent to Seminole County and hold such funds in the name of the Seminole Nation in trust for such creditor or shareholder until payment. Bank charges shall be paid from the assets in the account.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 617. Survival of Remedy after Dissolution**

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Commission Director, (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Title, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of

duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER SEVEN FOREIGN CORPORATIONS**

### **Section 701. Admission of Foreign Corporation**

(a) Certificate of Authority to Transact Business Required. No foreign corporation shall have the right to transact business in this jurisdiction until it shall have procured a certificate of authority so to do from the Commission Director. No foreign corporation shall be entitled to procure a certificate of authority under this Title to transact in this jurisdiction any business which a corporation organized under this Title is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the Nation, state, or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the Seminole Nation, and nothing in this Title contained shall be construed to authorize the Seminole Nation to regulate the organization or the internal affairs of such corporation.

(b) Activities Not Constituting Transaction of Business. Without excluding other activities which may not constitute transacting business in this jurisdiction, a foreign corporation shall not be considered to be transacting business in this jurisdiction, for the purposes of this Title, by reason of carrying on in this jurisdiction any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its directors and shareholders or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
- (5) Effecting sales through independent contractors;
- (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without jurisdiction before becoming binding contracts;
- (7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property;
- (8) Securing or collecting debts or enforcing any rights in property securing the same;

- (9) Transacting any business in interstate, international, or intertribal commerce, when such business does not begin, end, or contain any separate transaction in this jurisdiction; and
- (10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 702. Powers of Foreign Corporation**

A foreign corporation which shall have received a certificate of authority under this Title shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this Title, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this Title otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 703. Corporate Name of Foreign Corporation**

No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Shall contain the word “corporation,” “company,” “incorporated,” or “limited,” or shall contain an abbreviation of one of such words, or such corporation shall, for use in this jurisdiction, add at the end of its name one of such words or an abbreviation thereof;

(b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance, or professional services prohibited to corporations by this Title;

(c) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Seminole Nation of Oklahoma or any foreign corporation authorized to transact business in this jurisdiction, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Title, or the name of a corporation which has in effect a registration of its name as provided in this Title except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the Commission Director any one of the following:

- (1) A resolution of its board of directors adopting a fictitious name for use in transacting business in this jurisdiction which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this jurisdiction or to any name reserved or registered as provided in this Title; or

- (2) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or
- (3) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foregoing corporation to the use of such name of jurisdiction.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 704. Change of Name by Foreign Corporation**

Whenever a foreign corporation which is authorized to transact business in this jurisdiction shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this jurisdiction until it has changed its name to a name which is available to it under the laws of this jurisdiction or has otherwise complied with the provisions of this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 705. Application for Certificate of Authority**

- (a) Contents of Application.
  - (1) A foreign corporation, in order to procure a certificate of authority to transact business in this jurisdiction, shall make application therefor to the Commission Director, which application shall set forth:
    - (A) The name of the corporation and the state, Nation, or country under the laws of which it is incorporated;
    - (B) If the name of the corporation does not contain the word “corporation,” “company,” “incorporated,” or “limited,” or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this jurisdiction;
    - (C) The date of incorporation and the period of duration of the corporation;
    - (D) The address of the principal office of the corporation in the state, Nation, or country under the laws of which it is incorporated;
    - (E) The address of the proposed registered office of the corporation in this reservation, and the name of its proposed registered agent in this reservation at such address;

- (F) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this jurisdiction;
- (G) The names and respective addresses of the directors and officers of the corporation;
- (H) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
- (I) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
- (J) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Title.
- (K) An estimate expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this jurisdiction during such year, and an estimate expressed in dollars, of the gross amount of business which will be transacted by the corporation during each year; and
- (L) Such additional information as may be necessary as appropriate in order to enable the Commission Director to determine whether such corporation is entitled to a certificate of authority to transact business in this jurisdiction and to determine and assess the fees and franchise fees payable as in this Title prescribed.

(b) Form of Application. Such application shall be made on forms prescribed and furnished by the Commission Director and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of its officers signing such application.

[HISTORY: Enacted by TO 92-6, June 27, 1992; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 706. Filing of Application for Certificate of Authority**

(a) Delivery of Application to Commission Director. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the Commission Director, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state, Nation, or country under the laws of which it is incorporated.



(b) Approval and Filing of Certificate of Authority. If the Commission Director finds that such application conforms to law, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such documents the word “Filed,” and the month, day and year of the filing thereof;
- (2) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;
- (3) Issue a certificate of authority to transact business in this jurisdiction to which he shall affix the other duplicate original application; and
- (4) Return the certificate of authority, together with the duplicate original of the application affixed thereto by the Commission Director to the corporation or its representative.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 707. Effect of Certificate of Authority**

Upon the issuance of a certificate of authority by the Commission Director, the corporation shall be authorized to transact business in this jurisdiction for those purposes set forth in its application, subject, however, to the right of the Seminole Nation to suspend or to revoke such authority as provided in this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 708. Registered Office and Registered Agent of Foreign Corporation**

Each foreign corporation authorized to transact business in this jurisdiction shall have and continuously maintain within the Nation’s jurisdiction

(a) A registered office which may be, but need not be the same as its place of business in this jurisdiction; or

(b) A registered agent, which agent may be either an individual resident in this jurisdiction whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this jurisdiction, having a business office identical with such registered office.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 709. Change of Registered Office or Registered Agent of Corporation**

(a) Statement. A foreign corporation authorized to transact business in this jurisdiction may change its registered office or change its registered agent, or both, upon filing in the office of the Commission a statement setting forth:

- (1) The name of the corporation;
- (2) The address of its then registered office;
- (3) If the address of its then registered office be changed, the address to which the registered office is to be changed;
- (4) The name of its then registered agent;
- (5) If its registered agent be changed, the name of its successor registered agent;
- (6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (7) That such change was authorized by resolution duly adopted by its board of directors.

(b) Approval and Filing of Change. Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the Commission. If the Commission Director finds that such statement conforms to the provisions of this Title, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(c) Resignation of Registered Agent. Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Commission Director, who shall forthwith mail a copy thereof to the corporation at its principal office in the state, Nation, or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commission Director.

(d) Registered Agent's Change of Business Address. If a registered agent changes his or its business address to another place within the Nation's jurisdiction, he or it may change such address and the address of the registered office of any corporation of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent, need not include the information listed in Section 708(a)(6) or (7) and must recite that a copy of the statement has been mailed to the corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 710. Service of Process on Foreign Corporation**

The registered agent so appointed by a foreign corporation authorized to transact business in this jurisdiction shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Whenever a foreign corporation authorized to transact business in this jurisdiction shall fail to appoint or maintain a registered agent in this jurisdiction, or whenever any such registered agent cannot

with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Commission Director shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commission Director of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Commission Director, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state, Nation, or country. Any service so had on the Commission Director shall be returnable in not less than thirty days. The Commission Director shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. Nothing contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 711. Amendment to Articles of Incorporation of Foreign Corporation**

Whenever the articles of incorporation of a foreign corporation authorized to transact business in this jurisdiction are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the Commission a copy of such amendment duly authenticated by the proper officer of the state, or Nation, or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this jurisdiction, nor authorize such corporation to transact business in this jurisdiction under any other name than the name set forth in its certificate of authority.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 712. Merger of Foreign Corporation Authorized to Transact Business in this Jurisdiction**

Whenever a foreign corporation authorized to transact business in this jurisdiction shall be a party to a statutory merger permitted by the laws of the state, Nation, or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Commission a copy of the articles of merger duly authenticated by the proper officer of the state, Nation, or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this jurisdiction unless such corporation desires to pursue in this jurisdiction other or additional purposes than those which it is then authorized to transact in this jurisdiction.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 713. Amended Certificate of Authority**

A foreign corporation authorized to transact business in this jurisdiction shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this jurisdiction other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commission Director. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Commission Director, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 714. Withdrawal of Foreign Corporation**

(a) Application for Certificate of Withdrawal. A foreign corporation authorized to transact business in this jurisdiction may withdraw from this jurisdiction upon procuring from the Commission Director a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Commission Director an application for withdrawal, which shall set forth:

- (1) The name of the corporation and the state, Nation, or country under the laws of which it is incorporated;
- (2) That the corporation is not transacting business in this jurisdiction;
- (3) That the corporation surrenders its authority to transact business in this jurisdiction;
- (4) That the corporation revokes the authority of its registered agent in this jurisdiction to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this jurisdiction during the time the corporation was authorized to transact business in this jurisdiction may thereafter to be made on such corporation by service thereof on the Commission Director;
- (5) A post-office address to which the Commission Director may mail a copy of any process against the corporation that may be served on him;
- (6) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value shares, shares without par value, and series, if any, within a class, as of the date of such application;
- (7) A statement of the aggregate number of issued shares, itemized by class, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application;

- (8) A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application; and
- (9) Such additional information as may be necessary or appropriate in order to enable the Commission Director to determine and assess any unpaid fees or franchise fees payable by such foreign corporation as in this Title prescribed.

(b) Form of Application. The application for withdrawal shall be made on forms prescribed and furnished by the Commission Director and shall be executed by the corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 715. Filing of Application for Withdrawal**

(a) Approval and Filing. Duplicate originals of such application for withdrawal shall be delivered to the Commission. If the Commission Director finds that such application conforms to the provisions of this Title, he shall, when all fees and franchise fees have been paid as in this Title prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office;
- (3) Issue a certificate of withdrawal to which he shall affix the other duplicate original; and
- (4) Return the certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Commission Director, to the corporation or its representative.

(b) Effect of Issuance of Certificate for Withdrawal. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this jurisdiction shall cease.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 716. Revocation of Certificate of Authority**

(a) Conditions for Revocation. The certificate of authority of a foreign corporation to transact business in this jurisdiction may be revoked by the Commission Director upon the conditions prescribed in this section when:

- (1) The corporation has failed to file its annual report within the time required by this Title, or has failed to pay any fees, franchise fees or penalties prescribed by this Title when they have become due and payable; or
- (2) The corporation has failed to appoint and maintain a registered agent in this reservation as required by this Title; or
- (3) The corporation has failed, after change of its registered office or registered agent, to file in the office of the Commission a statement of such change as required by this Title; or
- (4) The corporation has failed to file in the office of the Commission any amendment to its articles of incorporation or any articles of merger within the time prescribed by this Title; or
- (5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Title.

(b) Prerequisites to Revocation. No certificate of authority of a foreign corporation shall be revoked by the Commission Director unless:

- (1) He shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this jurisdiction; and
- (2) The corporation shall fail prior to revocation to file such annual report, or pay such fees, franchise fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 717. Issuance of Certificate of Revocation**

(a) Issuance of Certificate. Upon revoking any such certificate of authority, the Commission Director shall:

- (1) Issue a certificate of revocation in duplicate;
- (2) File one of such certificate in his office; and
- (3) Mail to such corporation at its registered off a notice of such revocation accompanied by one of such certificates.

(b) Effect of Issuance of Certificate. Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this jurisdiction shall cease.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 718. Transacting Business without Certificate of Authority**

(a) Certificate of Authority Required for Maintenance of Suit. No foreign corporation transacting business in this jurisdiction without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this jurisdiction, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this jurisdiction by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this jurisdiction, until a certificate or authority shall have obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) Effect of Failure to Obtain Certificate of Authority. The failure of a foreign corporation to obtain a certificate of authority to transact business in this jurisdiction, shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this jurisdiction. A foreign corporation which transacts business in this jurisdiction without a certificate or authority shall be liable to the Seminole Nation, for the years or parts thereof during which it transacted business in this jurisdiction without a certificate of authority, in an amount equal to all fees and franchise fees which would have been imposed by this Title upon such corporation had it duly applied for and received a certificate of authority to transact business in this jurisdiction as required by this Title and thereafter filed all reports required by this Title, plus all penalties imposed by this Title for failure to pay such fees and franchise fees. The Attorney General shall bring proceedings to recover all amounts due the Seminole Nation under the provisions of this section, and to enjoin any further transaction of business by such foreign corporation within this jurisdiction until such corporation complies with the laws of the Seminole Nation of Oklahoma. The Nation shall have a first lien upon any property of a corporation which transacts business in this jurisdiction without a certificate of authority to guarantee payment of all fees and penalties due to the Nation, and upon the order of the court may seize and impound any property or assets of such corporation which may be found within the Nation's jurisdiction. Upon reduction of the Nation's claims for fees and penalties due to judgment, the Nation may take title to such property or assets as have been seized and impounded in full liquidation of its claims, or may execute upon such property and conduct a public sale thereof as in other execution sales under the laws of the Seminole Nation, provided, that within ten days of the date judgment is entered such corporation may redeem and secure the release of any property so seized or impounded by paying into court the full amount of the judgment.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER EIGHT ANNUAL REPORTS**

### **Section 801. Annual Report of Domestic and Foreign Corporations**

(a) Contents of Annual Report. Each domestic corporation, and each foreign corporation authorized to transact business in this jurisdiction, shall file, within the time prescribed by this Title, an annual report setting forth:

- (1) The name of the corporation and the state, Nation, or country under the laws of which it is incorporated.
- (2) The address of the registered office of the corporation in this jurisdiction, and the name of its registered agent in this jurisdiction at such address, and, in case of a foreign corporation, the address of its principal office in the state, Nation, or country under the laws of which it is incorporated.
- (3) A brief statement of the character of the business in which the corporation is actually engaged in this jurisdiction.
- (4) The names and respective address of the directors and officers of the corporation.
- (5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
- (6) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
- (7) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Title.
- (8) A statement, expressed dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this jurisdiction and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ended on the thirty-first day of December preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this jurisdiction. If, on the thirty-first day of December preceding the time herein provided for the filing of such report the corporation had not been in existence for a period of twelve months, or in the case of a foreign corporation had not been authorized to transact business in this jurisdiction for a period of twelve months, the statement with respect to business transacted shall be furnished for the period between the date of



incorporation or the date of its authorization to transact business in this jurisdiction, as the case may be, and such thirty-first day of December. If all the property of the corporation is located in this jurisdiction and all of its business is transacted at or from places of business in this jurisdiction, or if the corporation elects to pay the annual franchise fee on the basis of its entire stated capital, then the information required by this subparagraph need not be set forth in such report.

- (9) Such additional information as may be necessary or appropriate in order to enable the Commission Director to determine and assess the proper amount of franchise fees payable by such corporation.

(b) Form of Annual Report. Such annual report shall be made on forms prescribed and furnished by the Commission Director and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subparagraphs (7), (8), and (9) which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 802. Filing of Annual Report of Domestic and Foreign Corporations**

Such annual report of a domestic or foreign corporation shall be delivered to the Commission between the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Commission Director. Proof to the satisfaction of the Commission Director that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Commission Director finds that such report conforms to the requirements of this Title, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply if such report is corrected to conform to the requirements of this Title and returned to the Commission within thirty days from the date on which it was mailed to the corporation by the Commission Director.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER NINE**

### **FEES, FRANCHISE FEES, AND CHARGES**

#### **Section 901. Fees, Franchise Fees and Charges to be Collected by Commission**

(a) Fees and Charges. The Commission shall charge and collect in accordance with the provisions of this Title:

- (1) Fees for filing documents and issuing certificates;
- (2) Miscellaneous charges;
- (3) License fees; and
- (4) Franchise fees.

(b) Deposits. All such charges shall be properly accounted for and deposited in the Tribal Treasury Account, not less than ten days after receipt by the Commission.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 902. Fees for Filing Documents and Issuing Certificates**

(a) Articles of Incorporation. The Commission Director shall charge and collect fees for filing articles of incorporation and issuing a certificate of incorporation. The fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation, provided that the minimum fee for such service shall be Twenty-five Dollars (\$25.00). Any authorized stock without par value shall be treated as stock of par value of \$50.00 and the fees thereon collected accordingly.

(b) Articles of Amendment. The Commission Director shall charge and collect for filing articles of amendment and issuing a certificate of amendment a fee in the amount of Twenty-five Dollars (\$25.00). If the authorized capital of the corporation is increased by more than Twenty-five Thousand Dollars (\$25,000.00) by such action, the filing fee shall equal one-tenth of one percent (1/10 of 1%) of the increase. Each share authorized without par value shall be deemed to have a par value of Fifty Dollars (\$50.00) for purposes of this section and the fees thereon collected accordingly.

(c) Restated Articles. The Commission Director shall charge and collect for filing restated articles of incorporation a fee in the amount of Twenty-five Dollars (\$25.00).

(d) Articles of Merger or Consolidation. The Commission Director shall charge and collect for filing articles of merger or consolidation and issuing a certificate of merger or consolidation a fee in the amount of Twenty-five Dollars (\$25.00). If the authorized capital of the corporation is increased by more than Twenty-five Thousand Dollars (\$25,000.00) by such action, the filing fee shall equal one-tenth of one percent (1/10 of 1%) of the increase. Each share authorized without par value shall be deemed to have a par value of Fifty Dollars (\$50.00) for purposes of this section and the fees thereon collected accordingly.

(e) Certificate of Authority. The Commission Director shall charge and collect a fee for filing an application of a foreign corporation for a certificate of authority to transact business in this jurisdiction and issuing a certificate of authority. The fee shall be one tenth of one percent (1/10 of 1%) of the maximum amounts of capital to be invested by such corporation at any time during the fiscal year as shown by an affidavit of a general managing officer of such corporation attached to such application, provided, that the minimum fee for such service shall be Fifty Dollars (\$50.00)

(f) Amended Certificate of Authority. The Commission Director shall charge and collect for filing an application of a foreign corporation for an amended certificate of authority to transact business in this jurisdiction and issuing an amended certificate of authority a fee in the amount of Fifty Dollars (\$50.00).

(g) Amendments to Articles of Incorporation. The Commission Director shall charge and collect for filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this jurisdiction a fee of Twenty-five Dollars (\$25.00).

(h) Articles of Merger. The Commission Director shall charge and collect for filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this jurisdiction a fee of Twenty-five Dollars (\$25.00).

(i) Withdrawal. The Commission Director shall charge and collect for filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal a fee of Fifty Dollars (\$50.00).

(j) Other Statements or Reports. The Commission Director shall charge and collect for filing any other statement or report required by this Title to be filed a fee in the amount of Five Dollars (\$5.00).

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 903. Miscellaneous Charges**

The Commission Director shall charge and collect miscellaneous charges, including the following:

(a) Certified Copies. The fee for furnishing a certified copy of any document, instrument, or paper relating to a corporation shall be One Dollar (\$1.00) per page and Five Dollars (\$5.00) for the certificate and affixing the seal thereto.

(b) Receipt of Process as Agent. At the time of any service of process on him as agent of a corporation, the fee shall be Twenty Dollars (\$20.00), which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 904. License Fees Payable by Domestic Corporations**

The Commission Director shall charge and collect from each domestic corporation license fees based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of:

- (a) Filing articles of incorporation;
- (b) Filing articles of amendment increasing the number of authorized shares; and
- (c) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have the authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this jurisdiction had authority to issue. The license fees shall be at the rate of five cents per share up to and including the first 10,000 authorized shares, three cents per share for each authorized share in excess of 10,000 shares up to and including 100,000 shares, and two cent per share for each authorized share in excess of 100,000 shares, whether the shares are of par value or without par value. The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 905. License Fees Payable by Foreign Corporations**

The Commission Director shall charge and collect from each foreign corporation license fees based upon the proportion represented in this jurisdiction of the number of shares which it has authority to issue or the increase in the number of shares which it has authority to issue, at the time of:

- (a) Filing an application for a certificate of authority to transact business in this jurisdiction;
- (b) Filing articles of amendment which increased the number of authorized shares; and
- (c) Filing articles of merger or consolidation which increased the number of authorized shares which the surviving or new corporation, if a foreign corporation, has authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this jurisdiction had authority to issue. The license fees shall be at the rate of five cents per share up to and including the first 10,000 authorized shares represented in this jurisdiction, three cents per share for each authorized share in excess of 10,000 shares up to and including 100,000 shares represented in this jurisdiction, and two cents per share for each authorized share in excess of 100,000 shares represented in this jurisdiction, whether the shares are of par value or without par value. The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of such shares represented in this jurisdiction, and the number of previously authorized shares represented in this jurisdiction shall be taken into account in determining the rate applicable to the

increased number of authorized shares. The number of authorized shares represented in this jurisdiction shall be that proportion of its total authorized share which the sum of the value of its property located in this jurisdiction, and the gross amount of business in this jurisdiction bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted. Such proportion shall be determined from information contained in the application for a certificate of authority to transact business in this jurisdiction until the filing of an annual report and thereafter from information contained in the latest annual report filed by the corporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**Section 906. Franchise Fees Payable by Domestic Corporations**

(a) Annual Franchise Fee. The Commission Director shall charge and collect from each domestic corporation an annual franchise fee, payable in advance for the period from July 1 in each year to July 1 in the succeeding year, beginning July 1 in the calendar year in which such corporation is required to file its first annual report under this Title, at the rate of Ten Dollars (\$10.00) plus One Dollar (\$1.00) per Thousand Dollars (\$1,000.00) or part thereof by which the stated capital of the corporation represented in this jurisdiction exceeds Ten Thousand Dollars (\$10,000.00), as disclosed by the latest report filed by the corporation with the Commission Director.

(b) Amount of Stated Capital Represented in Nation's Jurisdiction; Definition. The amount represented in this jurisdiction of the stated capital of the corporation shall be that proportion of its stated capital which the sum of the value of its property located in this jurisdiction and the gross amount of business transacted by it at or from place of business in this jurisdiction bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted, except as follows:

- (1) If the corporation elects in its annual report in any year to pay its annual franchise fee on its entire stated capital, all franchise fees accruing against the corporation after the filing of such annual report shall be assessed accordingly until the corporation elects otherwise in an annual report for a subsequent year;
- (2) If the corporation fails to file its annual report in any year within the time prescribed by this Title, the proportion of its stated capital represented in this jurisdiction shall be deemed to be its entire stated capital, unless its annual report, is thereafter filed and its franchise fee thereafter adjusted by the Commission Director in accordance with the provisions of this Title, in which case the proportion shall likewise be adjusted to the sums proportion that would have prevailed if the corporation had filed its annual report within the time prescribed by this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 907. Franchise Fees Payable by Foreign Corporations**

(a) Annual Franchise Fee. The Commission Director shall charge and collect from each foreign corporation authorized to transact business in this jurisdiction an annual franchise fee, payable in advance for the period from July 1 in each year to July 1 in the succeeding year, beginning July 1 in the calendar year in which such corporation is required to file its first annual report under this Title, at the rate of Ten Dollars (\$10.00) plus One Dollars (\$1.00) per Thousand Dollars (\$1000.00) or part thereof by which stated capital of the corporation represented in this jurisdiction exceeds Ten Thousand Dollars (\$10,000.00), as disclosed by the latest annual report filed by the corporation with the Commission Director.

(b) Amount of Stated Capital Represented in Nation's Jurisdiction; Definition. The amount represented in this jurisdiction of the stated capital of the corporation shall be that proportion of its stated capital which the sum of the value of its property located in this jurisdiction and the gross amount of business transacted by it at or from places of business in this jurisdiction bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted except as follows:

- (1) If the corporation elects in its annual report in any year to pay its annual franchise fee on its entire stated capital, all franchise fees accruing against the corporation after the filing of such annual report shall be assessed accordingly until the corporation elects otherwise in an annual report for a subsequent year.
- (2) If the corporation fails to file its annual report in any year within the time prescribed by this Title, the proportion of its stated capital represented in this jurisdiction shall be deemed to be its entire stated capital, unless its annual report is thereafter filed and its franchise fee thereafter adjusted by the Nation's Director in accordance with the provisions of this Title, in which case the proportion shall likewise be adjusted to the same proportion that would have prevailed if the corporation had filed its annual report within the time prescribed by this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **Section 908. Assessment and Collection of Annual Franchise Fees**

(a) Collection; Notice. It shall be the duty of the Commission Director to collect all annual franchise fees and penalties imposed by, or assessed in accordance with this Title. Between the first day of March and the first day of June of each year, the Commission Director shall assess against each corporation, domestic and foreign, required to file an annual report in such year, the franchise fee payable by it for the period from July 1 of such year to July 1 of the succeeding year in accordance with the provisions of this Title, and, if it has failed to file its annual report within the time prescribed by this Title, the penalty imposed by this Title upon such corporation for its failure to do so; and shall mail a written notice to each corporation at its registered office in this jurisdiction notifying the corporation (1) of the amount of franchise fee assessed against it for the ensuing year and the amount of penalty, if any, assessed against it for

failure to file its annual report; (2) that objections, if any, to such assessment will be heard by the officer making the assessment on or before the fifteenth day of June of such year, upon receipt of a request from the corporation; and (3) that such fee and penalty shall be payable to the Seminole Nation through the office of the Commission Director on the first day of July next succeeding the date of the notice. Failure to receive such notice shall not relieve the corporation of its obligations to pay the fee and any penalty assessed or invalidate the assessment thereof.

(b) Hearing on Objections to Fee. The Commission Director shall have power to hear and determine objections to any assessments of franchise fee at any time after such assessment and, after hearing, to change or modify any such assessment. In the event of any adjustment of franchise fee with respect to which a penalty has been assessed for failure to file an annual report, the penalty shall be adjusted in accordance with the provisions of this Title imposing such penalty. All annual franchise fees and all penalties for failure to file annual reports shall be due and payable on the first day of July of each year.

(c) Action to Recover Fees. If the annual franchise fee assessed against any corporation subject to the provisions of this Title, together with all penalties assessed thereon, shall not be paid to the Commission Director on or before the thirty-first day of July of the year in which such fee is due, and payable, the Commission Director shall certify such fact to the Attorney General, if necessary, on or before the fifteenth day of November of such year, whereupon the Attorney General, if necessary, may institute an action against such corporation in the name of the Seminole Nation, in any court of competent jurisdiction, for the recovery of the amount of such franchise fee and penalties, together with the cost of suit, and prosecute the same to final judgment. For the purpose of enforcing collection, all annual franchise fees assessed in accordance with this Title, and all penalties assessed thereon and all interest and costs that shall accrue in connection with the collection thereof, shall be a prior and first lien on the real and personal property of the corporation from and including the first day of July of the year when such franchise fees become due and payable until such fees, penalties, interest, and costs shall have been paid.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 909. Rate of Interest Charged on Overdue Payments**

Any fee, franchise fee, charges, or penalties imposed by this Title, shall bear interest at the rate of 1.5% (one and one-half percent) per month from the date such fee, franchise fee, charge, or penalty becomes due and payable until the date actually paid.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER TEN PENALTIES**

### **Section 1001. Penalties Imposed Upon Corporations**

(a) Failure to File Annual Report. Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this Act shall be subject to a penalty of ten percent (10%) of the amount of the franchise fee assessed against it for the period beginning July 1 of the year in which such report should have been filed. Such penalty shall be assessed by the Commission Director at the time of the assessment of the franchise fee. If the amount of the franchise fee as originally assessed against such corporation be thereafter adjusted in accordance with the provisions of this Act, the amount of the penalty shall be likewise adjusted to ten percent (10%) of the amount of the adjusted franchise fee. The amount of the franchise fee and the amount of the penalty shall be separately stated in any notice to the corporation with respect thereto. If the franchise fee assessed in accordance with the provisions of this Act shall not be paid on or before the thirty-first day of July, it shall be deemed to be delinquent, and there shall be added a penalty of two percent (2%) for each month or part of month of August.

(b) Failure to Properly Answer Interrogatories. Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this Act, any interrogatories propounded by the Commission Director in accordance with the provisions of this Act, shall be deemed guilty of an offense and upon conviction thereof may be fined for each such refusal in any amount not exceeding Five Hundred Dollars (\$500.00).

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1002. Penalties Imposed Upon Officers and Directors**

(a) Criminal Sanctions for Officers and Directors; Failure to Properly Answer Interrogatories. Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act to answer truthfully and fully interrogatories propounded to him by the Commission Director in accordance with the provisions of this Act, or who signs any articles, statement, report, application, or other document filed with the Commission Director which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of an offense and upon conviction thereof may be fined in any amount not exceeding Five Hundred Dollars (\$500.00) and imprisoned for a term of six months in the Nation's or BIA's detention facilities.

(b) Civil Sanctions for Officers and Directors; Failure to Properly Answer Interrogatories. Any person described in subsection (a) of this section who is not personally subject to the criminal jurisdiction of the District Court shall be deemed to have created a public nuisance, and on judgment thereof, shall be liable for a civil penalty in an amount not exceeding Five Hundred Dollars (\$500.00).

(c) No Indemnification. The fines and penalties imposed by subsections (a) and (b) of this section shall be personal and not subject to indemnification by the corporation.



[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER ELEVEN MISCELLANEOUS PROVISIONS**

### **Section 1101. Interrogatories by Commission Director**

The Commission Director may propound to any corporation, domestic or foreign, subject to the provisions of this Title, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Title applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Commission Director and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Commission Director need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Title. The Commission Director shall certify to the Attorney General or the Prosecutor, for such action as the Attorney General or Prosecutor may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1102. Information Disclosed by Interrogatories**

Interrogatories propounded by the Commission Director and the answers thereto shall not be open to public inspection nor shall the Commission Director disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal or civil proceedings or in any other action by the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1103. Powers of Commission and Commission Director**

The Commission and the Commission Director, in addition to all power and authority set forth in Title 28 of the Code of Laws of the Seminole Nation, shall have the power and authority reasonably necessary to enable it/him to administer this Title efficiently and to perform the duties therein imposed upon the Commission and the Commission Director.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1104. Appeal from Action of Commission or Commission Director**

(a) Failure to Approve Documents. If the Commission Director shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this Title to be approved by the Commission Director before the same shall be filed in his office, he shall, within twenty days after the delivery thereof to him, give

written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the District Court by filing with the clerk of such court a petition setting forth a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the Commission Director; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commission Director or direct him to take such action as the court may deem proper.

(b) Revocation of Certificate of Authority of Foreign Corporation. If the Commission Director shall revoke the certificate of authority to transact business in this jurisdiction of any foreign corporation pursuant to the provisions of this Title, such foreign corporation may likewise appeal to the District Court, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this jurisdiction and a copy of the notice or revocation given by the Commission Director; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commission Director or direct him to take such action as the court may deem proper.

(c) Appeals. Appeals from all final orders and judgments entered by the District Court under this section on review of any ruling or decision of the District Court may be taken as in other civil actions.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1105. Certificates and Certified Copies to be Received in Evidence**

All certificates issued by the Commission Director in accordance with the provisions of this Title and all copies of documents filed in his office in accordance with the provisions of this Title when certified by him, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commission Director under the great seal of the Seminole Nation, as to the existence or non-existence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1106. Forms to be Furnished by Commission Director**

All reports required by this Title to be filed in the office of the Commission Director shall be made on forms which shall be prescribed and furnished by the Commission Director. Forms for all other documents to be filed in the office of the Commission Director shall be furnished by the Commission Director on request therefore, but the use thereof, unless otherwise specifically prescribed in this Title, shall not be mandatory.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1107. Greater Voting Requirements**

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this Title with respect to such action, the provisions of the articles of incorporation shall control.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1108. Waiver of Notice**

Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Title or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1109. Action by Shareholders Without a Meeting**

Any action required by this Title to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Commission Director under this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1110. Unauthorized Assumption of Corporate Powers**

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1111. Application to Foreign and Interstate Commerce**

The provisions of this Title shall apply to commerce with foreign nations, with the United States, and with the several states only insofar as the same may be permitted under the provisions of the several treaties and agreements between the Seminole Nation of Oklahoma and the United States.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1112. Reservation of Power**

The Seminole Nation of Oklahoma shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Title, and the Seminole Nation of Oklahoma shall have power to amend, repeal or modify this Title at its pleasure.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1113. Effect of Invalidity of Part of This Title**

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Title, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Title, except for the specific clause, sentence, paragraph, section or part of this Title so adjudged to be invalid or unconstitutional.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1114. Consent to District Court Jurisdiction**

Every corporation, whether domestic or foreign, and every officer, director, stockholder, and employee of such corporation which is authorized to do business within the Nation's jurisdiction pursuant to this Title and which avails itself of the privilege of doing business within the jurisdiction of the Seminole Nation of Oklahoma, shall be conclusively deemed to have consented to the jurisdiction of the Nation's District Court and Court of Appeals.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1115. Securities Act of 1933 Applicable**

The provisions of the United States Securities Act of 1933, as amended, 15 U.S.C. §§ 77(a) et. seq., and all rules and regulations of the United States in regard thereto, shall apply to any securities issued by any domestic corporation created by this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

#### **Section 1116. Corporations Doing Business at Effective Date of this Title**

Every foreign corporation doing business within the jurisdiction of Seminole Nation of Oklahoma on the effective date of this Title shall be permitted one-hundred and twenty days (120) from the effective date of this Title in which to bring themselves into compliance with this Title. During such period of one-hundred twenty (120) days, no such corporation shall be liable for any fine, penalty, seizure or impoundment of property or assets, and may not be enjoined by reason of failure to comply with this Title, provided, that if such compliance is not achieved within such time, all fines and penalties shall be figured from the effective date of this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1117. Exemption of Public Service Utility Companies**

(a) Statement of Exemption. The provisions of this Title shall not apply to any public service utility company organized or domesticated pursuant to the laws of the State of Oklahoma and subject to regulation by the Corporation Commission of the State of Oklahoma when such corporation's business activities within this jurisdiction consist exclusively of providing one or more of the following services to residents, businesses, the Nation, or other persons lawfully within this jurisdiction:

- (1) Telephone, telegraph, and other consumer communications;
- (2) Electric service for consumer use;
- (3) Natural gas service for consumer use;
- (4) Water service for consumer use; and
- (5) Sewage and trash removal and disposal.

(b) Qualification for Exemption. In order to qualify for this exemption, such foreign corporation shall file with the Commission duplicate originals of an affidavit stating facts sufficient to inform the Commission Director that such corporation is entitled to the exemption created by this Section.

(c) Approval of Exemption. If the Commission Director finds that such corporation is entitled to this exemption, he shall:

- (1) Endorse on each affidavit the word "Filed," and the month, day, and year of the filing thereof;
- (2) File in his office one duplicate original of the affidavit; and
- (3) Issue a certificate of exemption to which he shall affix the other duplicate original affidavit.

(d) Effect of Approval. Thereafter such foreign corporation shall be entitled and authorized to conduct exclusively those exempt business operations described in subsection (a) of this section.

(e) Conduct of Non-Exempt Business. If such corporation wishes to also conduct non-exempt business within the jurisdiction such corporation shall comply with all the provisions of this Title to the extent that it conducts non-exempt business within this jurisdiction.

(f) When Exemption Not Required. Nothing in this section shall be construed as preventing any public service utility company defined in subsection (a) of this section from, at its option, refusing or failing to obtain a certificate of exemption authorized by this section and electing to comply with the provisions of this Title as if no exemption were provided.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER TWELVE NONPROFIT CORPORATIONS**

### **Section 1201. Definitions**

(a) Definitions. For the purpose of this Chapter, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them as follows:

- (1) “Corporation” means a nonprofit corporation formed for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.
- (2) “Notice” means written notification of a meeting stating time, place, and, in the case of a special meeting, purpose, properly addressed according to the last available corporate records, sent or delivered by a duly authorized person to each director or member entitled to vote at the meeting, and delivered or mailed not less than five (5) nor more than thirty (30) days before the meeting, excluding the day of the meeting, or a published notification of a meeting of a corporation having at least one hundred members, if its board of directors should elect to give such notification thereof in lieu of written notification, to be made by publication in a newspaper of general circulation published in the reservation two (2) successive weeks previous to the date of the meeting, stating the time, place, and, in the case of a special meeting its purpose.
- (3) “Articles” means the original articles of incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.
- (4) “By-laws” means the code adopted for the regulation or management of the internal affairs of the corporation, regardless of how designated.
- (5) “Member” means an entity, either corporate or natural, having any membership or shareholder rights in a corporation in accordance with its articles, by-laws, or both.
- (6) “Directors” means the persons vested with the general management of the affairs of the corporation, regardless of how they are designated.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1202. Purposes of a Nonprofit Corporation**

A nonprofit corporation may be formed under this Chapter for any lawful purpose or purposes.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]



### **Section 1203. Incorporators**

Three or more natural persons legally competent to enter into contracts may form a nonprofit corporation under this Chapter.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1204. Articles of Incorporation**

(a) Execution. The articles shall be signed by each of the incorporators and acknowledged by at least three of them.

(b) Contents. The articles of the corporation organized under this Chapter shall state:

- (1) The name of the corporation;
- (2) The purpose of the corporation;
- (3) That the corporation does not afford pecuniary gain, incidentally or otherwise, to its members;
- (4) The period of duration of corporate existence which may be perpetual;
- (5) The location, by city, town, or other community, and the name of its registered agent and registered office in the Nation's jurisdiction;
- (6) The name and address of each incorporator;
- (7) The number of directors constituting the first board of directors, the name and address of each such director, and the tenure in office of the first directors; and
- (8) Any other provision, consistent with the law of the Seminole Nation for regulating the business of the corporation or the conduct of the corporate affairs.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1205. Corporate Name**

A corporation organized pursuant to this Chapter may use any corporate name authorized for use pursuant to Section 108 of this Title, provided, that it shall not be necessary for a nonprofit corporation to use the word "corporation," "company," "incorporated," or "limited" or an abbreviation of one of those words in its corporate name.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1206. Corporate Capacity and Powers**

A nonprofit corporation incorporated under this Chapter shall have general corporate capacity, and shall have and possess all of the general powers of a domestic corporation incorporated under this Title.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1207. Filing of Articles**

The articles of incorporation shall be filed in the office of the Commission. If the articles conform to law, and upon the payment of a fee of Ten Dollars (\$10.00), the Commission Director shall record the articles and issue and record a certificate of incorporation. The certificate shall state the name of the corporation and the fact and date of incorporation. Corporate existence shall begin upon the issuance by the Commission Director of the certificate of incorporation.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1208. Amendment of Articles**

Every nonprofit corporation wishing to change its name or otherwise amend its articles of incorporation shall pay a fee of Ten Dollars (\$10.00) and shall make such change or amendment in the following manner: The board of directors shall pass a resolution reciting that such change of name or amendment is advisable, and a certified copy of said resolution under the corporate seal shall be filed in the office of the Commission Director. In addition, in the event of a change in the name of such corporation, a notice of such change of name shall be published once in a newspaper having general circulation in the reservation. The text and application of the amendment shall be set out in the resolution. Upon filing of the resolution, and proof of publication, if necessary, in the office of the Commission Director, the articles of incorporation shall be deemed amended.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1209. Organizational Meeting**

After commencement of corporate existence, the first meeting of the board of directors shall be held at the call of the incorporators or the directors, after notice, for the purpose of adopting the initial by-laws, electing officers, performing other acts in the internal organization of the corporation, and for such other purposes as shall be stated in the notice of the meeting. Such meeting shall be held within thirty (30) days after the issuance of a certificate of incorporation by the Commission Director. The first meeting of the members shall be held at the call of an officer or of the initial board of directors, after notice. The initial by-laws adopted by the board of directors shall remain effective until legally amended or repealed at a membership meeting duly called for the specific purpose of amending or repealing the by-laws.

[HISTORY: Enacted by TO 92-6, June. 27, 1992.]

### **Section 1210. Disposition of Assets**

Notwithstanding any provision of the Nation's law or in the articles of incorporation to the contrary, the articles of incorporation of each nonprofit corporation which is an exempt charitable, religious, literary, educational, or scientific organization as described in Section 501(c)(3) of the Federal Internal Revenue Code of 1954, as amended, shall be conclusively deemed to contain the following provisions: Upon the dissolution of the corporation, the board of trustees shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, literary or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law, as the board of trustees shall determine. Any such assets not so disposed of shall be disposed of by the District Court, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

### **Section 1211. General Corporate Laws Applicable**

The provisions of this Title shall generally apply to corporations organized pursuant to this Chapter except where a different rule is provided in this Chapter; provided, that nonprofit corporations formed exclusively for charitable, religious, literary, educational, or scientific purposes which qualify as a corporation exempt from federal taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code, as amended, or any successor provision to this section, shall be exempt from payment of any franchise fees or license fees. In no case shall any filing fee required by this Title exceed Ten Dollars (\$10.00) for such exempt corporations. An exempt nonprofit corporation may, but is not required, to file an annual report with the Commission Director.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

## **CHAPTER THIRTEEN**

### **EFFECTIVE DATE**

#### **Section 1301. Effective Date**

This Title shall be in full force and effect according to its terms from and after the date of enactment by the General Council of Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 92-6, June 27, 1992.]

**TITLE 4A  
SEMINOLE NATION OF OKLAHOMA  
LIMITED LIABILITY COMPANY ACT  
INDEX**

<b>TITLE 4A SEMINOLE NATION OF OKLAHOMA LIMITED LIABILITY COMPANY ACT INDEX .....</b>	<b>i</b>
<b>TITLE 4A SEMINOLE NATION OF OKLAHOMA LIMITED LIABILITY COMPANY ACT .....</b>	<b>5</b>
<b>INTRODUCTION .....</b>	<b>5</b>
Section 1.    Title and Codification .....	5
Section 2.    Purpose .....	5
Section 3.    Authorization .....	5
<b>CHAPTER ONE GENERAL PROVISIONS .....</b>	<b>5</b>
Section 101.  Definitions .....	5
Section 102.  Name Set Forth in Certificate.....	7
Section 103.  Reservation of Name .....	8
Section 104.  Registered Office; Registered Agent .....	9
Section 105.  Service of Process on Domestic Limited Liability Companies.....	11
Section 106.  Nature of Business Permitted; Powers .....	12
Section 107.  Business Transactions of Member or Manager with the Limited Liability Company .....	13
Section 108.  Indemnification .....	13
Section 109.  Service of Process on Managers and Liquidating Trustees .....	13
<b>CHAPTER TWO FORMATION; CERTIFICATE OF FORMATION .....</b>	<b>15</b>
Section 201.  Certificate of Formation.....	15
Section 202.  Amendment to Certificate of Formation.....	15
Section 203.  Cancellation of Certificate .....	16
Section 204.  Execution .....	16
Section 205.  (Intentionally Left Blank) .....	17
Section 206.  Filing.....	17
Section 207.  Notice.....	20
Section 208.  Restated Certificate .....	21
Section 209.  Merger and Consolidation .....	22
Section 210.  Contractual Appraisal Rights .....	25
Section 211.  Certificate of Correction .....	25

Section 212.	Domestication of Non-United States Entities .....	25
Section 213.	Transfer or Continuance of Domestic Limited Liability Companies .....	28
Section 214.	Conversion of Certain Entities to a Limited Liability Company .....	30
Section 215.	Series of Members, Managers or Limited Liability Company Interests.....	32
Section 216.	Approval of Conversion of a Limited Liability Company .....	36
<b>CHAPTER THREE MEMBERS.....</b>		<b>39</b>
Section 301.	Admission of Members .....	39
Section 302.	Classes and Voting .....	40
Section 303.	Liability to Third Parties.....	41
Section 304.	Events of Bankruptcy .....	41
Section 305.	Access to and Confidentiality of Information; Records .....	42
Section 306.	Remedies for Breach of Limited Liability Company Agreement by Member.....	44
<b>CHAPTER FOUR MANAGERS.....</b>		<b>45</b>
Section 401.	Admission of Managers .....	45
Section 402.	Management of Limited Liability Company .....	45
Section 403.	Contributions by a Manager.....	45
Section 404.	Classes and Voting .....	45
Section 405.	Remedies for Breach of Limited Liability Company Agreement by Manager .....	46
Section 406.	Reliance on Reports and Information by Member or Manager .....	47
Section 407.	Delegation of Rights and Powers to Manage.....	47
<b>CHAPTER FIVE FINANCE .....</b>		<b>48</b>
Section 501.	Form of Contribution.....	48
Section 502.	Liability for Contribution.....	48
Section 503.	Allocation of Profits and Losses .....	49
Section 504.	Allocation of Distributions .....	49
Section 505.	Defense of Usury Not Available .....	49
<b>CHAPTER SIX DISTRIBUTIONS AND RESIGNATION .....</b>		<b>50</b>
Section 601.	Interim Distributions .....	50
Section 602.	Resignation of Manager.....	50
Section 603.	Resignation of Member .....	50
Section 604.	(Intentionally left blank.) .....	50
Section 605.	Distribution in Kind.....	50
Section 606.	Right to Distribution.....	51

Section 607. Limitations on Distribution.....	51
<b>CHAPTER SEVEN ASSIGNMENT OF LIMITED LIABILITY</b>	
<b>COMPANY INTERESTS .....</b>	<b>53</b>
Section 701. Nature of Limited Liability Company Interest.....	53
Section 702. Assignment of Limited Liability Company Interest.....	53
Section 703. Member's Limited Liability Company Interest Subject to Charging Order .	54
Section 704. Right of Assignee to Become Member.....	55
Section 705. Powers of Estate of Deceased or Incompetent Member .....	55
<b>CHAPTER EIGHT DISSOLUTION.....</b>	<b>56</b>
Section 801. Dissolution .....	56
Section 802. Judicial Dissolution .....	57
Section 803. Winding Up.....	57
Section 804. Distribution of Assets .....	58
Section 805. Trustees or Receivers for Limited Liability Companies; Appointment; Powers; Duties .....	59
<b>CHAPTER NINE FOREIGN LIMITED LIABILITY COMPANIES.....</b>	<b>61</b>
Section 901. Governing Law.....	61
Section 902. Registration Required; Application.....	61
Section 903. Issuance of Registration.....	62
Section 904. Name; Registered Office; Registered Agent.....	62
Section 905. Amendments to Application .....	65
Section 906. Cancellation of Registration.....	65
Section 907. Doing Business Without Registration .....	65
Section 908. Foreign Limited Liability Companies Doing Business Without Having Qualified; Injunctions .....	66
Section 909. Execution; Liability .....	66
Section 910. Service of Process on Registered Foreign Limited Liability Companies .....	66
Section 911. Service of Process on Unregistered Foreign Limited Liability Companies...	67
<b>CHAPTER TEN DERIVATIVE ACTIONS .....</b>	<b>68</b>
Section 1001. Right to Bring Action .....	68
Section 1002. Proper Plaintiff .....	68
Section 1003. Complaint.....	68
Section 1004. Expenses .....	68
<b>CHAPTER ELEVEN MISCELLANEOUS .....</b>	<b>69</b>

Section 1101. Construction and Application of Chapter and Limited Liability Company Agreement.....	69
Section 1102. Short Title .....	69
Section 1103. Severability .....	69
Section 1104. Cases Not Provided for in this Chapter .....	70
Section 1105. Fees.....	70
Section 1106. Reserved Power of Seminole Nation to Alter or Repeal Chapter .....	72
Section 1107. Treatment of Limited Liability Companies.....	72
Section 1108. Cancellation of Certificate of Formation for Failure to Pay Taxes .....	75
Section 1109. Revival of Domestic Limited Liability Company .....	75
Section 1110. Scope of Act.....	76
<b>CHAPTER TWELVE OTHER LAWS .....</b>	<b>78</b>
Section 1201. Rights, Liabilities and Duties Under Prior Statutes.....	78
Section 1202. Provisions as Cumulative.....	78



**TITLE 4A**  
**SEMINOLE NATION OF OKLAHOMA**  
**LIMITED LIABILITY COMPANY ACT**

**INTRODUCTION**

**Section 1.     Title and Codification**

This act shall be known as the Seminole Nation of Oklahoma limited Liability Company Act and codified as Title 4A, of the Seminole Nation of Oklahoma Code.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 2.     Purpose**

To adopt a statute that authorizes the formation of a limited liability company (LLC) under the Code of Laws of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 3.     Authorization**

The Seminole Nation is empowered to enact this Act pursuant to the Constitution of the Seminole Nation of Oklahoma, Article V(a).

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007.]

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101.   Definitions**

As used in this chapter unless the context otherwise requires:

- (a)     "Attorney General" means the Attorney General of the Seminole Nation.
- (b)     "Bankruptcy" means an event that causes a person to cease to be a member as provided in section 304 of this title.
- (c)     "Certificate of Formation" means the certificate referred to in section 201 of this title, and such certificate as amended.
- (d)     "BCR Commission" means the Business and Corporate Regulatory Commission established pursuant to Title 3A of the Code of Laws of the Seminole Nation.

(e) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.

(f) "Court" or "District Court" means the Seminole Nation's courts or the Court of Indian Offenses (CFR Court) located within the territorial jurisdiction of the Seminole Nation and exercising jurisdiction over the Seminole Nation.

(g) "Foreign Limited Liability Company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(h) "Knowledge" means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact.

(i) "Limited Liability Company" and "Domestic Limited Liability Company" means a limited liability company formed under the laws of the Seminole Nation and having one (1) or more members.

(j) "Limited Liability Company Agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only one (1) member shall not be unenforceable by reason of there being only one (1) person who is a party to the limited liability company agreement. A written limited liability company agreement or another written agreement or writing:

- (l) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement;
  - (A) If such person, or a representative authorized by such person, orally, in writing or by other action such as payment for a limited liability company interest executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or
  - (B) Without such execution, if such person, or a representative authorized by such, person orally, in writing or by other action such as payment for a limited liability company interest complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing.

- (2) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subparagraph (A) of this paragraph, or by reason of its having been signed by a representative as provided in this chapter.

(k) "Limited Liability Company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(l) "Liquidating Trustee" means a person carrying out the winding up of a limited liability company.

(m) "Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to a limited liability company agreement or similar instrument under which the limited liability company is formed.

(n) "Member" means a person who has been admitted to a limited liability company as a member as provided in section 301 of this title or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(o) "Person" means a natural person, partnership (whether general or limited), trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity, in each case, whether domestic or foreign, and a limited liability company or foreign limited liability company.

(p) "Personal Representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(q) "Seminole Nation" or "Nation" means the Seminole Nation of Oklahoma.

(r) "State" means a federally recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any state, territory, possession or other jurisdiction of the United States other than the Seminole Nation.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 102. Name Set Forth in Certificate**

The name of each limited liability company as set forth in its certificate of formation:

(a) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC";

(b) May contain the name of a member or manager;

(c) Shall be such as to distinguish it upon the records of the BCR Commission from the name on such records of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the Seminole Nation or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company in the Seminole Nation; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records of the BCR Commission from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the Seminole Nation with the written consent of the other corporation, partnership, limited partnership, statutory trust or limited liability company, which written consent shall be filed with the BCR Commission; and

(d) May contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited," or "Trust" (or abbreviations of like import); and

(e) Shall not contain the words "Seminole Nation" or "Seminole Tribe" unless the limited liability company is being formed by or under the authority of the General Council of the Seminole Nation or an authorized agency of the Seminole Nation. The word "Seminole" on its own may be used in the name of a limited liability company as long as it is not deemed misleading by the BCR Commission and is in accordance with all other provisions of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Reservation of Name**

(a) The exclusive right to the use of a name may be reserved by:

- (1) Any person intending to organize a limited liability company under this chapter and to adopt that name;
- (2) Any domestic limited liability company or any foreign limited liability company registered in the Seminole Nation which, in either case, proposes to change its name;
- (3) Any foreign limited liability company intending to register in the Seminole Nation and adopt that name;
- (4) Any person intending to organize a foreign limited liability company and intending to have it registered in the Seminole Nation and adopt that name.

(b) The reservation of a specified name shall be in accordance with section 102 of this title and made by filing an application with the BCR Commission, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the BCR Commission finds that the name is available for use by a domestic or foreign limited liability company, the BCR Commission shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the BCR Commission a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing a notice of cancellation with the BCR Commission, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Unless the BCR Commission finds that an application, notice of transfer, or notice of cancellation filed with the BCR Commission does not conform to law, and upon receipt of all filing fees required by law, the BCR Commission shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the BCR Commission.

(c) A fee as set forth in section 1105(a)(1) of this title shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007.]

#### **Section 104. Registered Office; Registered Agent**

(a) Each limited liability company shall have and maintain in the Seminole Nation:

- (1) A registered office, which may but need not be a place of its business in the Seminole Nation; and
- (2) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of the Seminole Nation whose business office is identical with the limited liability company's registered office, or a domestic corporation, or a domestic limited partnership, or a domestic limited liability company, or a domestic statutory trust, or a foreign corporation, or a foreign limited partnership, or a foreign limited liability company authorized to do business in the Seminole Nation and having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent, or the limited liability company itself.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address in the Seminole Nation by paying a fee as set forth in section 1105(a)(2) of this title and filing a certificate with the BCR

Commission, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent. Upon the filing of such certificate, the BCR Commission shall furnish to the registered agent a certified copy of the same, and thereafter, or until further change of address, as authorized by law, the registered office in the Seminole Nation of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate.

(c) In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file a certificate with the BCR Commission, executed by such registered agent setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in section 1105(a)(2) of this title. Upon the filing of such certificate, the BCR Commission shall furnish to the registered agent a certified copy of the certificate. A change of name of any person acting as a registered agent of a limited liability company as a result of a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the Certificate of Formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its Certificate of Formation under section 202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(d) The registered agent of one or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in section 1105(a)(2) of this title and filing a certificate with the BCR Commission stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the Seminole Nation. The BCR Commission shall then issue a certificate that the successor registered agent has become the registered agent of the limited liability companies so ratifying and approving such change and setting out the names of such limited liability companies. Filing of such certificate of resignation shall be deemed to be an amendment of the Certificate of Formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its Certificate of Formation under section 202 of this title.

(e) The registered agent of one or more limited liability companies may resign without appointing a successor registered agent by paying a fee as set forth in section 1105(a)(2) of this title and filing a certificate of resignation with the BCR Commission, but such resignation

shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected limited liability company at least thirty (30) days prior to the filing of the certificate by mailing or delivering such notice to the limited liability company at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of thirty (30) days after the filing by the registered agent of the certificate of resignation, the Certificate of Formation of such limited liability company shall be deemed to be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each limited liability company for which the resigned registered agent had been acting shall thereafter be upon the BCR Commission in accordance with section 105 of this title.

(f) For purposes of this title, “in the Seminole Nation” and “of the Seminole Nation” means the geographical boundaries defined in the as defined in Article XV of the Seminole Nation Constitution and reflected in the Treaty of March 21, 1866, 14 Stat.755, entered into by the Seminole Nation and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation; property owned in fee by the Seminole Nation; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation shall also extend to all property located outside said boundaries, owned in fee by the Seminole Nation or held in trust by the United States on behalf of the Seminole Nation.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 105. Service of Process on Domestic Limited Liability Companies**

(a) Service of legal process upon any domestic limited liability company shall be made by delivering a copy personally to any manager of the limited liability company in the Seminole Nation or the registered agent of the limited liability company in the Seminole Nation, or by leaving it at the dwelling house or usual place of abode in the Seminole Nation of any such manager or registered agent, if the registered agent is an individual, or at the registered office or other place of business of the limited liability company in the Seminole Nation. If the registered agent is a corporation, service of process upon it as such may be made by serving, in the Seminole Nation, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company in the Seminole Nation, to be effective, must be delivered there at least six (6) days before the return date of the process, and in the presence of an adult person. The officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited liability company upon the BCR Commission, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. In the event that service is effected through the BCR Commission in accordance with this subsection, the BCR Commission shall forthwith notify the limited liability company by letter, certified mail, return receipt requested, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the BCR Commission or, if no such address appears, at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the BCR Commission pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the BCR Commission that service is being effected pursuant to this subsection, and to pay the BCR Commission the sum of Fifty Dollars (\$50). The BCR Commission shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Director, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The BCR Commission shall not be required to retain such information for a period longer than five (5) years from the Secretary's receipt of the service of process.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 106. Nature of Business Permitted; Powers**

(a) A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of granting policies of insurance, or assuming insurance risks or banking as defined in the laws of the State of Oklahoma, section 2002 of Title 18.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law of the Seminole Nation or by its limited liability company agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

(c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]



**Section 107. Business Transactions of Member or Manager with the Limited Liability Company**

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 108. Indemnification**

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 109. Service of Process on Managers and Liquidating Trustees**

(a) A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the Seminole Nation involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company, or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company or, if there is none, the BCR Commission, as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within the Seminole Nation and such appointment of the registered agent or, if there is none, the BCR Commission, shall be irrevocable. As used in this section, the term "manager" refers (i) to a person who is a manager as defined in section 101(m) of this title and (ii) to a person, whether or not a member of a limited liability company, who, although not a manager as defined in section 101(m) of this title, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in section 101(m) of this title shall not, by itself, constitute participation in the management of the limited liability company.

(b) Service of process shall be affected by serving the registered agent or, if there is none, the BCR Commission, with one copy of such process in the manner provided by law for service of summons. In the event service is made under this subsection upon the BCR Commission, the plaintiff shall pay to the BCR Commission the sum of Fifty Dollars (\$50). In addition, the Clerk of the Court in which the civil action or proceeding is pending shall, within

seven (7) days of such service, deposit in the United States mail, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the registered office of the limited liability company and at the manager's or liquidating trustee's address last known to the party desiring to make such service.

(c) In any action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Clerk as provided in subsection (b) of this section; however, the Court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.

(d) In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the Courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the Seminole Nation, or the exclusivity of arbitration in a specified jurisdiction of the Seminole Nation, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the Seminole Nation, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the District Court with respect to matters relating to the organization or internal affairs of a limited liability company.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The District Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER TWO**

### **FORMATION; CERTIFICATE OF FORMATION**

#### **Section 201. Certificate of Formation**

(a) In order to form a limited liability company, one or more authorized persons must execute a Certificate of Formation. The Certificate of Formation shall be filed with the BCR Commission and set forth:

- (1) The name of the limited liability company as provided under and in accordance with § 102 of this title;
- (2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 104 of this title; and
- (3) Any other matters the members determine to include therein.

(b) A limited liability company is formed at the time of the filing of the initial Certificate of Formation with the BCR Commission or at any later date or time specified in the Certificate of Formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's Certificate of Formation.

(c) The filing of the Certificate of Formation with the BCR Commission shall make it unnecessary to file any other documents to form a limited liability company and such Certificate of Formation shall be conclusive evidence of the formation of a limited liability company.

(d) A limited liability company agreement may be entered into either before, after or at the time of the filing of a Certificate of Formation and, whether entered into before, after or at the time of such filing, may be made effective as of the formation of the limited liability company or at such other time or date as provided in the limited liability company agreement.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007.]

#### **Section 202. Amendment to Certificate of Formation**

(a) A Certificate of Formation is amended by filing a certificate of amendment thereto with the BCR Commission. The certificate of amendment shall set forth:

- (1) The name of the limited liability company; and
- (2) The amendment to the Certificate of Formation.

(b) A manager or, if there is no manager, then any member who becomes aware that any statement in a Certificate of Formation was false when made, or that any matter described has changed making the Certificate of Formation false in any material respect, shall promptly amend the Certificate of Formation.

(c) A Certificate of Formation may be amended at any time for any other proper purpose.

(d) Unless otherwise provided in this chapter or unless a later effective date or time, which shall be a date or time certain, is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the BCR Commission.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 203. Cancellation of Certificate**

A Certificate of Formation shall be cancelled upon the dissolution and the completion of winding up of a limited liability company, or as provided in section 104(d) or section 1108 of this chapter, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-Seminole Nation entity. A certificate of cancellation shall be filed with the BCR Commission to accomplish the cancellation of a Certificate of Formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (a) The name of the limited liability company;
- (b) The date of filing of its Certificate of Formation;
- (c) The future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective upon the filing of the certificate; and
- (d) Any other information the person filing the certificate of cancellation determines.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 204. Execution**

(a) Each certificate required by this subchapter to be filed with the BCR Commission shall be executed by one or more authorized persons.

(b) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be

sworn to, verified or acknowledged, and need not be filed with the BCR Commission, but if in writing, must be retained by the limited liability company.

(c) The execution of a certificate by an authorized person constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the authorized person's knowledge and belief, the facts stated therein are true.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 205. (Intentionally Left Blank)**

**Section 206. Filing**

(a) The signed copy of the Certificate of Formation and of any certificates of amendment, correction, amendment of a certificate with a future effective date or time, termination of a certificate with a future effective date or time or cancellation, or of any judicial decree of amendment or cancellation, and of any certificate of merger or consolidation, any restated certificate, any corrected certificate, any certificate of conversion to limited liability company, any certificate of conversion to a non-Seminole Nation entity, any certificate of transfer, any certificate of transfer and continuance, any certificate of limited liability company domestication, and of any certificate of revival shall be delivered to the BCR Commission. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the BCR Commission under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the BCR Commission shall record the date and time of its delivery.

(b) Unless the BCR Commission finds that any certificate does not conform to law, upon receipt of all filing fees required by law the BCR Commission shall:

- (1) Certify that the Certificate of Formation, the certificate of amendment, the certificate of correction, the certificate of amendment of a certificate with a future effective date or time, the certificate of termination of a certificate with a future effective date or time, the certificate of cancellation, or of any judicial decree of amendment or cancellation, the certificate of merger or consolidation, the restated certificate, the corrected certificate, the certificate of conversion to limited liability company, the certificate of conversion to a non-Seminole Nation entity, the certificate of transfer, the certificate of transfer and continuance, the certificate of limited liability company domestication or the certificate of revival has been filed with BCR Commission by endorsing upon the signed certificate the word "Filed," and the date and time of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. Except as provided in subsections (c) or (d) of this section, such date and time of filing of a certificate shall be the date and time of delivery of the certificate;
- (2) File and index the endorsed certificate;

- (3) Prepare and return to the person who filed it or that person's representative a copy of the signed certificate, similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and
- (4) Cause to be entered such information from the certificate as the BCR Commission deems appropriate into a database of the Seminole Nation BCR Commission, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium. The BCR Commission is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the BCR Commission and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that information entered into the system accurately reflects the content of certificates in the possession of the registered agent at the time of entry.

(c) Upon request made upon or prior to delivery, the BCR Commission may, to the extent deemed practicable, establish as the date and time of filing of a certificate a date and time after its delivery. If the BCR Commission refuses to file any certificate due to an error, omission or other imperfection, the BCR Commission may hold such certificate in suspension, and in such event, upon delivery of a replacement certificate in proper form for filing and tender of the required fees within five business days after notice of such suspension is given to the filer, the BCR Commission shall establish as the date and time of filing of such certificate the date and time that would have been the date and time of filing of the rejected certificate had it been accepted for filing. The BCR Commission shall not issue a certificate of good standing with respect to any limited liability company with a certificate held in suspension pursuant to this subsection. The BCR Commission may establish as the date and time of filing of a certificate the date and time at which information from such certificate is entered pursuant to subdivision (a)(4) of this section if such certificate is delivered on the same date and within four hours after such information is entered.

(d) If together with the actual delivery of a certificate and tender of the required fees, there is delivered to the BCR Commission a separate affidavit, which in its heading shall be designated as an affidavit of extraordinary condition, attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the BCR Commission establish such date and time as the date and time of filing of such certificate; or upon the actual delivery of a certificate and tender of the required fees, the BCR Commission in its discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the BCR Commission that an earlier effort to deliver such certificate and tender such fees was made in good faith and specifying the date and time of such effort; and the BCR Commission determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period, not to exceed two business days, after the cessation of such extraordinary condition, then the BCR Commission may establish such date and time as the date and time of filing of such certificate. No fee shall be paid to the BCR

Commission for receiving an affidavit of extraordinary condition. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces, or disaster, catastrophe, war or other armed conflict, revolution or insurrection or rioting or civil commotion in the United States or a locality in which the BCR Commission conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the BCR Commission's office, or weather or other condition in or about a locality in which the BCR Commission conducts its business, as a result of which the BCR Commission's office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort. The BCR Commission may require such proof as it deems necessary to make the determination required under this subsection, and any such determination shall be conclusive in the absence of actual fraud. If the BCR Commission establishes the date and time of filing of a certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the BCR Commission's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed certificate to which it relates. Such filed certificate shall be effective as of the date and time established as the date and time of filing by the BCR Commission pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

(e) Upon the filing of a certificate of amendment, or judicial decree of amendment, certificate of correction, corrected certificate or restated certificate with the BCR Commission, or upon the future effective date or time of a certificate of amendment, or judicial decree thereof, or restated certificate, as provided for therein, the Certificate of Formation shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of cancellation, or a judicial decree thereof, or a certificate of merger or consolidation which acts as a certificate of cancellation or a certificate of transfer, or a certificate of conversion to a non-Seminole Nation entity, or upon the future effective date or time of a certificate of cancellation, or a judicial decree thereof, or of a certificate of merger or consolidation which acts as a certificate of cancellation or a certificate of transfer, or a certificate of conversion to a non-Seminole Nation entity, as provided for therein, or as specified in section 104(d) of this title, the Certificate of Formation is cancelled. Upon the filing of a certificate of limited liability company domestication or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company with the effect provided in section 212 of this title. Upon the filing of a certificate of conversion to limited liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the effect provided in section 214 of this title. Upon the filing of a certificate of revival, the limited liability company is revived with the effect provided in section 1109 of this title. Upon the filing of a certificate of transfer and continuance, or upon the future effective date or time of a certificate of transfer and continuance, as provided for therein, the limited liability company filing the certificate of transfer and continuance shall continue to exist

as a limited liability company of the Seminole Nation with the effect provided in section 213 of this title.

(f) If any certificate filed in accordance with this chapter provides for a future effective date or time and if, prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with section 204 of this title, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated.

(g) A fee as set forth in section 1105(a)(3) of this title shall be paid at the time of the filing of a Certificate of Formation, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate with a future effective date or time, a certificate of termination of a certificate with a future effective date or time, a certificate of cancellation, a certificate of merger or consolidation, a restated certificate, a corrected certificate, a certificate of conversion to limited liability company, a certificate of conversion to a non-Seminole Nation entity, a certificate of transfer, a certificate of transfer and continuance, a certificate of limited liability company domestication or a certificate of revival.

(h) The BCR Commission, acting as agent, shall collect and deposit in a separate account established exclusively for that purpose, a Courthouse fee with respect to each filed instrument. Said fees shall be for the purposes of defraying costs incurred by the BCR Commission. The fee to the BCR Commission shall be \$20 for each instrument filed with the BCR Commission in accordance with this section.

(i) A fee as set forth in section 1105(a)(4) of this title shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in section 1105(a)(5) of this title shall be paid for each page copied.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 207. Notice**

The fact that a Certificate of Formation is on file with the BCR Commission is notice that the entity formed in connection with the filing of the Certificate of Formation is a limited liability company formed under the laws of the Seminole Nation and is notice of all other facts set forth therein which are required to be set forth in a Certificate of Formation by section 201(a)(1) and



(2) of this title and which are permitted to be set forth in a Certificate of Formation by section 215(b) of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 208. Restated Certificate**

(a) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its Certificate of Formation which are then in effect and operative as a result of their having theretofore been filed with the BCR Commission one or more certificates or other instruments pursuant to any of the sections referred to in this subchapter, and it may at the same time also further amend its Certificate of Formation by adopting a restated Certificate of Formation.

(b) If a restated Certificate of Formation merely restates and integrates but does not further amend the initial Certificate of Formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this subchapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in section 206 of this title with the BCR Commission. If a restated certificate restates and integrates and also further amends in any respect the Certificate of Formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one authorized person, and filed as provided in section 206 of this title with the BCR Commission.

(c) A Restated Certificate of Formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original Certificate of Formation with the BCR Commission, and the future effective date or time, which shall be a date or time certain, of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's Certificate of Formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of a restated Certificate of Formation with the BCR Commission, or upon the future effective date or time of a restated Certificate of Formation as provided for therein, the initial Certificate of Formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated Certificate of Formation, including any further amendment or changes made thereby, shall be the Certificate of Formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change affected in connection with the restatement and integration of the Certificate of Formation shall be subject to any other provision of this chapter,

not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 209. Merger and Consolidation**

(a) As used in this section, "other business entity" means a corporation, a statutory trust, or a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership whether general, including a limited liability partnership, or limited, including a limited liability limited partnership, and a foreign limited liability company, but excluding a domestic limited liability company.

(b) Pursuant to an agreement of merger or consolidation, one or more domestic limited liability companies may merge or consolidate with or into one or more domestic limited liability companies or one or more other business entities formed or organized under the laws of the Seminole Nation or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(c) If a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation, executed by one or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity, with the BCR Commission. The certificate of merger or consolidation shall state:

- (1) The name and jurisdiction of formation or organization of each of the domestic limited liability companies and other business entities which are to merge or consolidate;

- (2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies and other business entities which are to merge or consolidate;
- (3) The name of the surviving or resulting domestic limited liability company or other business entity;
- (4) The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;
- (5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;
- (6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and
- (7) If the surviving or resulting entity is not a domestic limited liability company, or a corporation or limited partnership organized under the laws of the Seminole Nation, a statement that such surviving or resulting other business entity agrees that it may be served with process in the Seminole Nation in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the BCR Commission as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the BCR Commission. In the event of service hereunder upon the BCR Commission, the procedures set forth in section 911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the BCR Commission with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the BCR Commission, and the BCR Commission shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 911(c) of this title.

(d) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the BCR Commission of a certificate of merger or consolidation.

(e) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(f) An agreement of merger or consolidation approved in accordance with subsection (b) of this section may:

- (1) Effect any amendment to the limited liability company agreement; or
- (2) Effect the adoption of a new limited liability company agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation, including a limited liability company formed for the purpose of consummating a merger or consolidation, shall be the limited liability company agreement of the surviving or resulting limited liability company.

(g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Seminole Nation, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Seminole Nation, in any of such domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability

company to wind up its affairs under section 803 of this title or pay its liabilities and distribute its assets under section 804 of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 210. Contractual Appraisal Rights**

A limited liability company agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group of members or limited liability company interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, any conversion of the limited liability company to another business form, any transfer to or domestication in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 211. Certificate of Correction**

(a) Whenever any certificate authorized to be filed with the BCR Commission under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the BCR Commission a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.

(b) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the BCR Commission a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the BCR Commission if the certificate being corrected were then being filed shall be paid and collected by the BCR Commission for the use of the Seminole Nation in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 212. Domestication of Non-United States Entities**

(a) As used in this section, "non-United States entity" means a foreign limited liability company, other than one formed under the laws of a state of the United States, or a

corporation, a business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a partnership whether general (including a limited liability partnership) or limited (including a limited liability limited partnership) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction, other than any state of the United States.

(b) Any non-United States entity may become domesticated as a limited liability company in the Seminole Nation by complying with subsection (g) of this section and filing with the BCR Commission in accordance with section 206 of this title:

- (1) A certificate of limited liability company domestication that has been executed by one or more authorized persons in accordance with section 204 of this title; and
- (2) A Certificate of Formation that complies with section 201 of this title and has been executed by one or more authorized persons in accordance with section 204 of this title.

(c) The certificate of limited liability company domestication shall state:

- (1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;
- (2) The name of the non-United States entity immediately prior to the filing of the certificate of limited liability company domestication;
- (3) The name of the limited liability company as set forth in the Certificate of Formation filed in accordance with subsection (b) of this section;
- (4) The future effective date or time, which shall be a date or time certain, of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the Certificate of Formation; and
- (5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited liability company domestication.

(d) Upon the filing with the BCR Commission of the certificate of limited liability company domestication and the Certificate of Formation or upon the future effective date or time of the certificate of limited liability company domestication and the Certificate of Formation, the non-United States entity shall be domesticated as a limited liability company in the Seminole Nation and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding section 201 of this title, the existence of the limited liability company shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a limited liability company in the Seminole Nation shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited liability company in the Seminole Nation, or the personal liability of any person therefore.

(f) The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the Seminole Nation, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited liability company on that date.

(g) Prior to filing a certificate of limited liability company domestication with the BCR Commission, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Seminole Nation law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the Seminole Nation, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic limited liability company to which such non-United States entity has been domesticated and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic limited liability company to which such non-United States entity has been domesticated, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic limited liability company to which such non-United States entity has domesticated for any purpose of the laws of the Seminole Nation.

(i) When a non-United States entity has become domesticated as a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of the Seminole Nation, be deemed to be the same entity as the domesticating non-United States entity. Unless otherwise agreed, or as required under applicable non-Seminole Nation law, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign

jurisdiction in which it was existing immediately prior to domestication, the limited liability company and such non-United States entity shall, for all purposes of the laws of the Seminole Nation, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the Seminole Nation and the laws of such foreign country or other foreign jurisdiction.

(j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited liability company or other entity.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 213. Transfer or Continuance of Domestic Limited Liability Companies**

(a) Upon compliance with this section, any limited liability company may transfer to or domesticate in any jurisdiction and, in connection therewith, may elect to continue its existence as a limited liability company in the Seminole Nation.

(b) Unless otherwise provided in a limited liability company agreement, a transfer or domestication or continuance described in subsection (a) of this section shall be approved in writing by all of the managers and all of the members. If all of the managers and all of the members of the limited liability company or such other vote as may be stated in a limited liability company agreement shall approve the transfer or domestication described in subsection

(a) of this section, a certificate of transfer if the limited liability company's existence as a limited liability company of the Seminole Nation is to cease, or a certificate of transfer and continuance if the limited liability company's existence as a limited liability company in the Seminole Nation is to continue, executed in accordance with section 204 of this title, shall be filed with the BCR Commission in accordance with section 206 of this title. The certificate of transfer or the certificate of transfer and continuance shall state:

- (1) The name of the limited liability company and, if it has been changed, the name under which its Certificate of Formation was originally filed;
- (2) The date of the filing of its original Certificate of Formation with the BCR Commission;
- (3) The jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated;
- (4) The future effective date or time, which shall be a date or time certain, of the transfer or domestication to the jurisdiction specified in subsection (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and continuance;



- (5) That the transfer or domestication or continuance of the limited liability company has been approved in accordance with this section;
- (6) In the case of a certificate of transfer, (i) that the existence of the limited liability company as a limited liability company of the Seminole Nation shall cease when the certificate of transfer becomes effective, and (ii) the agreement of the limited liability company that it may be served with process in the Seminole Nation in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Seminole Nation, and that it irrevocably appoints the BCR Commission as its agent to accept service of process in any such action, suit or proceeding;
- (7) The address to which a copy of the process referred to in subsection (b)(6) of this section shall be mailed to it by the BCR Commission. In the event of service hereunder upon the BCR Commission, the procedures set forth in section 911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the BCR Commission with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the BCR Commission, and the BCR Commission shall notify the limited liability company that has transferred or domesticated out of the Seminole Nation at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 911(c) of this title; and
- (8) In the case of a certificate of transfer and continuance, that the limited liability company will continue to exist as a limited liability company of the Seminole Nation after the certificate of transfer and continuance becomes effective.

(c) Upon the filing with the BCR Commission of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the BCR Commission of all fees prescribed in this chapter, the BCR Commission shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon the limited liability company shall cease to exist as a limited liability company of the Seminole Nation. Such certificate of the BCR Commission shall be prima facie evidence of the transfer or domestication by such limited liability company out of the Seminole Nation.

(d) The transfer or domestication of a limited liability company out of the Seminole Nation in accordance with this section and the resulting cessation of its existence as a limited liability company of the Seminole Nation pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer or domestication. Unless otherwise agreed, the transfer or domestication of a limited liability company out of the Seminole Nation in accordance with this section shall not require such limited liability company to wind up its

affairs under section 803 of this title or pay its liabilities and distribute its assets under section 804 of this title.

(e) If a limited liability company files a certificate of transfer and continuance, after the time the certificate of transfer and continuance becomes effective, the limited liability company shall continue to exist as a limited liability company of the Seminole Nation, and the laws of the Seminole Nation, including this chapter, shall apply to the limited liability company to the same extent as prior to such time. So long as a limited liability company continues to exist as a limited liability company of the Seminole Nation following the filing of a certificate of transfer and continuance, the continuing domestic limited liability company and the entity formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the limited liability company to, or its domestication in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the Seminole Nation, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State and the laws of such foreign country or other foreign jurisdiction.

(f) In connection with a transfer or domestication of a domestic limited liability company to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form in which the limited liability company will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another business form.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 214. Conversion of Certain Entities to a Limited Liability Company**

(a) As used in this section, the term "other entity" means a corporation, statutory trust, business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a partnership whether general, including a limited liability partnership, or limited, including a limited liability limited partnership, or a foreign limited liability company.

(b) Any other entity may convert to a domestic limited liability company by complying with subsection (h) of this section and filing with the BCR Commission in accordance with section 206 of this title:

- (1) A certificate of conversion to limited liability company that has been executed by one (1) or more authorized persons in accordance with section 204 of this title; and
- (2) A Certificate of Formation that complies with section 201 of this title and has been executed by one (1) or more authorized persons in accordance with section 204 of this title.

(c) The certificate of conversion to a limited liability company shall state:

- (1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company;
- (2) The name of the other entity immediately prior to the filing of the certificate of conversion to a limited liability company;
- (3) The name of the limited liability company as set forth in its Certificate of Formation filed in accordance with subsection (b) of this section; and
- (4) The future effective date or time, which shall be a date or time certain, of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the Certificate of Formation.

(d) Upon the filing with the BCR Commission of the certificate of conversion to a limited liability company and the Certificate of Formation or upon the future effective date or time of the certificate of conversion to limited liability company and the Certificate of Formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding section 201 of this title, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the Seminole Nation, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited liability company to which such other entity has converted and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited liability company to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which such other entity has converted for any purpose of the laws of the Seminole Nation.

(g) Unless otherwise agreed, or as required under applicable non-Seminole Nation law,

the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company. When another entity has been converted to a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of the Seminole Nation, be deemed to be the same entity as the converting other entity.

(h) Prior to filing a certificate of conversion to limited liability company with the BCR Commission, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.

(i) In connection with a conversion hereunder, rights or securities of or interests in the other entity which is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other entity.

(j) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, another entity to the Seminole Nation by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 215. Series of Members, Managers or Limited Liability Company Interests**

(a) A limited liability company agreement may establish or provide for the establishment of one (1) or more designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement establishes or provides for the establishment of one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held, directly or indirectly, including through a nominee or otherwise, and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the Certificate of Formation of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in

the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Notice in a Certificate of Formation of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any series when such notice is included in the Certificate of Formation, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice. The fact that a Certificate of Formation that contains the foregoing notice of the limitation on liabilities of a series is on file with the BCR Commission shall constitute notice of such limitation on liabilities of a series.

(c) Notwithstanding section 303(a) of this title, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

(d) A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(e) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(f) Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than fifty percent (50%) of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A series may have more than one manager. Subject to section 602 of this title, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited

liability company agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(g) Notwithstanding section 606 of this title, but subject to subsections (h) and (k) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member associated with a series that has been established in accordance with subsection (b) of this section becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(h) Notwithstanding section 607(a) of this title, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section. A limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (b) of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to section 607(c) of this title, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(i) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(j) Subject to section 801 of this title, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such

series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 801 of this title or otherwise upon the first to occur of the following:

- (1) At the time specified in the limited liability company agreement;
- (2) Upon the happening of events specified in the limited liability company agreement; or
- (3) Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of the members of the limited liability company associated with such series or, if there is more than one class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds of the then-current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate.

(k) Notwithstanding section 803(a) of this title, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the District Court, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under section 803(b) of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in section 804 of this title, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(l) On application by or for a member or manager associated with a series established in accordance with subsection (b) of this section, the District Court may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

(m) If a foreign limited liability company that is registering to do business in the Seminole Nation in accordance with section 902 of this title is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties

with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 216. Approval of Conversion of a Limited Liability Company**

(a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, statutory trust, business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a partnership whether general, including a limited liability partnership, or limited, including a limited liability limited partnership, or a foreign limited liability company.

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate.

(c) Unless otherwise agreed, the conversion of a domestic limited liability company to another business form pursuant to this section shall not require such limited liability company to wind up its affairs under section 803 of this title or pay its liabilities and distribute its assets under section 804 of this title.

(d) In connection with a conversion of a domestic limited liability company to another business form pursuant to this section, rights or securities of or interests in the domestic limited liability company which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business form into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business form.



(e) If a limited liability company shall convert in accordance with this section to another business form organized, formed or created under the laws of a jurisdiction other than the Seminole Nation, a certificate of conversion to non-Seminole Nation entity executed in accordance with section 204 of this title, shall be filed with the BCR Commission in accordance with section 206 of this title. The certificate of conversion to non-Seminole Nation entity shall state:

- (1) The name of the limited liability company and, if it has been changed, the name under which its Certificate of Formation was originally filed;
- (2) The date of filing of its original Certificate of Formation with the BCR Commission;
- (3) The jurisdiction in which the business form, to which the limited liability company shall be converted, is organized, formed or created;
- (4) The future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Seminole Nation entity;
- (5) That the conversion has been approved in accordance with this section;
- (6) The agreement of the limited liability company that it may be served with process in the Seminole Nation in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Seminole Nation, and that it irrevocably appoints the BCR Commission as its agent to accept service of process in any such action, suit or proceeding;
- (7) The address to which a copy of the process referred to in paragraph (6) of this subsection shall be mailed to it by the BCR Commission. In the event of service hereunder upon the BCR Commission, the procedures set forth in section 911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the BCR Commission with the address specified in this subdivision and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the BCR Commission, and the BCR Commission shall notify the limited liability company that has converted out of the Seminole Nation at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 911(c) of this title.

(f) Upon the filing with the BCR Commission of the certificate of conversion to non-Seminole Nation entity or upon the future effective date or time of the certificate of conversion to non-Seminole Nation entity and payment to the BCR Commission of all fees prescribed in this chapter, the BCR Commission shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon the limited liability company shall cease to exist as a limited liability company of the Seminole Nation. Such certificate of the BCR Commission shall be prima facie evidence of the conversion by such limited liability company out of the Seminole Nation.

(g) The conversion of a limited liability company out of the Seminole Nation in accordance with this section and the resulting cessation of its existence as a limited liability company of the Seminole Nation pursuant to a certificate of conversion to non-Seminole Nation entity shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such conversion.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER THREE**

### **MEMBERS**

#### **Section 301. Admission of Members**

(a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

- (1) The formation of the limited liability company; or
- (2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

- (1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;
- (2) In the case of an assignee of a limited liability company interest, as provided in section 704(a) of this title and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or
- (3) Unless otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a limited liability company interest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with section 209(b) of this title, at the time provided in and upon compliance with the limited liability company agreement of the surviving or resulting limited liability company.

(c) In connection with the domestication of a non-United States entity, as defined in section 212 of this title, as a limited liability company in the Seminole Nation in accordance with section 212 of this title or the conversion of another entity, as defined in section 214 of this title, to a domestic limited liability company in accordance with section 214 of this title, a person is

admitted as a member of the limited liability company at the time provided in and upon compliance with the limited liability company agreement.

(d) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company.

(e) Unless otherwise provided in a limited liability company agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of limited liability company interests or another interest in a limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 302. Classes and Voting**

(a) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members shall have no voting rights.

(b) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such

action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 303. Liability to Third Parties**

(a) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) Notwithstanding the provisions of subsection (a) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

(c) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 304. Events of Bankruptcy**

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

(a) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, a member:

- (1) Makes an assignment for the benefit of creditors;

- (2) Files a voluntary petition in bankruptcy;
- (3) Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;
- (4) Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;
- (6) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or

(b) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 305. Access to and Confidentiality of Information; Records**

(a) Each member of a limited liability company has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished at what time and location and at whose expense, as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

- (1) True and full information regarding the status of the business and financial condition of the limited liability company;
- (2) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;
- (3) A current list of the name and last known business, residence or mailing address of each member and manager;

- (4) A copy of any written limited liability company agreement and Certificate of Formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;
- (5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and
- (6) Other information regarding the affairs of the limited liability company as is just and reasonable.

(b) Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager.

(c) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be brought in the District Court. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (a)(3) of this section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the demanding member or manager may apply to the District Court for an order to compel such disclosure. The District Court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The District Court may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a)(3) of this section and to make copies or abstracts therefrom, or the District Court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a)(3) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the District Court deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in

subsection (a)(3) of this section, the demanding member or manager shall first establish (1) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and (2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The District Court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the District Court may deem just and proper. The District Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the Seminole Nation and kept in the Seminole Nation upon such terms and conditions as the order may prescribe.

(g) The rights of a member or manager to obtain information as provided in this section may be restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members and in compliance with any applicable requirements of the limited liability company agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this section.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 306. Remedies for Breach of Limited Liability Company Agreement by Member**

A limited liability company agreement may provide that:

(a) A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

(b) At the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in section 502(c) of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **CHAPTER FOUR MANAGERS**

### **Section 401. Admission of Managers**

A person may be named or designated as a manager of the limited liability company as provided in section 101(m) of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 402. Management of Limited Liability Company**

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than fifty percent (50%) of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to section 602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than one manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 403. Contributions by a Manager**

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 404. Classes and Voting**

(a) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights,

powers and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(b) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 405. Remedies for Breach of Limited Liability Company Agreement by Manager**

A limited liability company agreement may provide that:

(a) A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

(b) At the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 406. Reliance on Reports and Information by Member or Manager**

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 407. Delegation of Rights and Powers to Manage**

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to one or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER FIVE FINANCE**

### **Section 501. Form of Contribution**

The Contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 502. Liability for Contribution**

(a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value, as stated in the records of the limited liability company, of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of non-defaulting members, a forced sale of that limited liability company interest, forfeiture of his or her limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of his or her limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 503. Allocation of Profits and Losses**

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 504. Allocation of Distributions**

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 505. Defense of Usury Not Available**

No obligation of a member or manager of a limited liability company to the limited liability company arising under the limited liability company agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER SIX**

### **DISTRIBUTIONS AND RESIGNATION**

#### **Section 601. Interim Distributions**

Except as provided in this chapter, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 602. Resignation of Manager**

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 603. Resignation of Member**

A member may resign from a limited liability company only at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. Notwithstanding anything to the contrary under applicable law, unless a limited liability company agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, a limited liability company agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 604. (Intentionally left blank.)**

#### **Section 605. Distribution in Kind**

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited

liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company. Except as provided in the limited liability company agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 606. Right to Distribution**

Subject to sections 607 and 804 of this title, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 607. Limitations on Distribution**

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (a), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount

of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year (3) period and an adjudication of liability against such member is made in the said action.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]



## **CHAPTER SEVEN**

### **ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS**

#### **Section 701. Nature of Limited Liability Company Interest**

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 702. Assignment of Limited Liability Company Interest**

(a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement and upon:

- (1) The approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or
- (2) Compliance with any procedure provided for in the limited liability company agreement.

(b) Unless otherwise provided in a limited liability company agreement:

- (1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;
- (2) An assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
- (3) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(c) Unless otherwise provided in a limited liability company agreement, a member's interest in a limited liability company may be evidenced by a certificate of limited liability

company interest issued by the limited liability company. A limited liability company agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates.

(d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(e) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 703. Member's Limited Liability Company Interest Subject to Charging Order**

(a) On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the limited liability company interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company, which receiver shall have only the rights of an assignee, and the court may make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's limited liability company interest. The court may order a foreclosure of the limited liability company interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of an assignee.

(c) Unless otherwise provided in a limited liability company agreement, at any time before foreclosure, a limited liability company interest charged may be redeemed:

- (1) By the judgment debtor;
- (2) With property other than limited liability company property, by one or more of the other members; or
- (3) By the limited liability company with the consent of all of the members whose interests are not so charged.

(d) This chapter does not deprive a member of a right under exemption laws with respect to the member's limited liability company interest.

(e) This section provides the exclusive remedy by which a judgment creditor of a member or member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest.

(f) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 704. Right of Assignee to Become Member**

(a) An assignee of a limited liability company interest may become a member as provided in a limited liability company agreement and upon:

- (1) The approval of all of the members of the limited liability company other than the member assigning limited liability company interest; or
- (2) Compliance with any procedure provided for in the limited liability company agreement.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is liable for the obligations of the assignor to make contributions as provided in section 502 of this title. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in section 502 of this Title, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a limited liability company agreement.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to a limited liability company under subchapters V and VI of this chapter.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 705. Powers of Estate of Deceased or Incompetent Member**

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under a limited liability company agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER EIGHT DISSOLUTION**

### **Section 801. Dissolution**

(a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

- (1) At the time specified in a limited liability company agreement, but if no such time is set forth in the limited liability company agreement, then the limited liability company shall have a perpetual existence;
- (2) Upon the happening of events specified in a limited liability company agreement;
- (3) Unless otherwise provided in a limited liability company agreement, upon the affirmative vote or written consent of the members of the limited liability company or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than two-thirds of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate;
- (4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:
  - (A) Unless otherwise provided in a limited liability company agreement, within ninety (90) days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or
  - (B) A member is admitted to the limited liability company in the manner provided for in the limited liability company agreement,

effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety (90) days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(5) The entry of a decree of judicial dissolution under section 802 of this title.

(b) Unless otherwise provided in a limited liability company agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 802. Judicial Dissolution**

On application by or for a member or manager, the District Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 803. Winding Up**

(a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs, but the District Court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 203 of this title, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without

affecting the liability of members and managers and without imposing liability on a liquidating trustee.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 804. Distribution of Assets**

(a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment thereof, other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under section 601 or section 604 of this title;
- (2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under section 601 or section 604 of this title; and
- (3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved:

- (1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;
- (2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and
- (3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within ten (10) years after the date of dissolution.
  - (A) If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and

obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

(c) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(d) Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

(e) Section 607 of this title shall not apply to a distribution to which this section applies.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 805. Trustees or Receivers for Limited Liability Companies: Appointment; Powers; Duties**

When the Certificate of Formation of any limited liability company formed under this chapter shall be canceled by the filing of a certificate of cancellation pursuant to section 203 of this title, the District Court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the limited liability company to be trustees, or appoint one or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be

done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the District Court shall think necessary for the purposes aforesaid.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]



## **CHAPTER NINE**

### **FOREIGN LIMITED LIABILITY COMPANIES**

#### **Section 901. Governing Law**

- (a) Subject to the Constitution of the Seminole Nation:
  - (1) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers, to the extent that such laws are consistent with this Act; and
  - (2) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the Seminole Nation.
- (b) A foreign limited liability company shall be subject to section 106 of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 902. Registration Required: Application**

(a) Before doing business in the Seminole Nation, a foreign limited liability company shall register with the BCR Commission. In order to register, a foreign limited liability company shall submit to the BCR Commission:

- (1) A copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:
  - (A) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in the Seminole Nation, which must be in accordance with § 102 of this title;
  - (B) The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;
  - (C) The nature of the business or purposes to be conducted or promoted in the Seminole Nation;
  - (D) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 904(b) of this title;

(E) A statement that the BCR Commission is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in section 910(b) of this title; and

(F) The date on which the foreign limited liability company first did, or intends to do, business in the Seminole Nation.

(2) A fee as set forth in section 1105(a)(6) of this title shall be paid.

(b) A person shall not be deemed to be doing business in the Seminole Nation solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007.]

### **Section 903. Issuance of Registration**

(a) If the BCR Commission finds that an application for registration conforms to law and all requisite fees have been paid, the BCR Commission shall:

(1) Certify that the application has been filed by endorsing upon the original application the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

(b) The BCR Commission shall prepare and return to the person who filed the application or the person's representative a copy of the original signed application, similarly endorsed, and shall certify such copy as a true copy of the original signed application.

(c) The filing of the application with the BCR Commission shall make it unnecessary to file any other documents under this Act.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 904. Name: Registered Office: Registered Agent**

(a) A foreign limited liability company may register with the BCR Commission under any name as provided under and in accordance with § 102 of this title, whether or not it is the name under which it is registered in the jurisdiction of its formation, that includes the words "limited liability company" or the abbreviation "L.L.C." or the designation "LLC" and that could be registered by a domestic limited liability company; provided however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records of the BCR Commission from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company or limited partnership reserved, registered, formed or organized under the laws of the Seminole Nation with the written

consent of the other corporation, partnership, statutory trust, limited liability company or limited partnership, which written consent shall be filed with the BCR Commission.

(b) Each foreign limited liability company shall have and maintain in the Seminole Nation:

- (1) A registered office which may but need not be a place of its business in the Seminole Nation; and
- (2) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of the Seminole Nation whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, or a domestic limited partnership, or a domestic limited liability company, or a domestic statutory trust, or a foreign corporation, or a foreign limited partnership, or a foreign limited liability company authorized to do business in the Seminole Nation having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent.

(c) A registered agent may change the address of the registered office of the foreign limited liability company or companies for which the agent is registered agent to another address in the Seminole Nation by paying a fee as set forth in section 1105(a)(7) of this title and filing with the BCR Commission a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies for which it is registered agent. Upon the filing of such certificate, the BCR Commission shall furnish to the registered agent a certified copy of the same, and thereafter, or until further change of address, as authorized by law, the registered office in the Seminole Nation of each of the foreign limited Liability Companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the BCR Commission a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited Liability Companies for which it is registered agent, and shall pay a fee as set forth in section 1105(a)(7) of this title. Upon the filing of such certificate, the BCR Commission shall furnish to the registered agent a certified copy of the same. A change of name of any person acting as a registered agent of a foreign limited liability company as a result of the merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability

company shall not be required to take any further action with respect thereto to amend its application under section 905 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.

(d) The registered agent of one or more foreign limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in section 1105(a)(7) of this title and filing a certificate with the BCR Commission stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited liability company's registered office in the Seminole Nation. The BCR Commission shall then issue a certificate that the successor registered agent has become the registered agent of the foreign limited liability companies so ratifying and approving such change and setting out the names of such foreign limited liability companies. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under section 905 of this title.

(e) The registered agent of one or more foreign limited liability companies may resign without appointing a successor registered agent by paying a fee as set forth in section 1105(a)(7) of this title and filing a certificate of resignation with the BCR Commission, but such resignation shall not become effective until thirty (30) days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected foreign limited liability company at least thirty (30) days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited liability company at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of thirty (30) days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in the Seminole Nation and its registration shall be deemed to be cancelled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the BCR Commission in accordance with section 911 of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007.]

#### **Section 905. Amendments to Application**

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file with the BCR Commission a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in section 1105(a)(6) of this title.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 906. Cancellation of Registration**

A foreign limited liability company may cancel its registration by filing with the BCR Commission a certificate of cancellation, executed by an authorized person, together with a fee as set forth in section 1105(a)(6) of this title. A cancellation does not terminate the authority of the BCR Commission to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the Seminole Nation.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 907. Doing Business Without Registration**

(a) A foreign limited liability company doing business in the Seminole Nation may not maintain any action, suit or proceeding in the Seminole Nation until it has registered in the Seminole Nation, and has paid to the Seminole Nation all fees and penalties for the years or parts thereof, during which it did business in the Seminole Nation without having registered.

(b) The failure of a foreign limited liability company to register in the Seminole Nation does not impair:

- (1) The validity of any contract or act of the foreign limited liability company;
- (2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or
- (3) Prevent the foreign limited liability company from defending any action, suit or proceeding in the District Court.

(c) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company having done business in the Seminole Nation without registration.

(d) Any foreign limited liability company doing business in the Seminole Nation without first having registered shall be fined and shall pay to the BCR Commission Two Hundred Dollars (\$200.00) for each year or part thereof during which the foreign limited liability company failed to register in the Seminole Nation.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 908. Foreign Limited Liability Companies Doing Business Without Having Qualified: Injunctions**

The District Court shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in the Seminole Nation if such foreign limited liability company has failed to register under this subchapter or if such foreign limited liability company has secured a certificate of the BCR Commission under section 903 of this title on the basis of false or misleading representations. Upon the motion of the Attorney General or upon the relation of proper parties, the Attorney General shall proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 909. Execution: Liability**

Section 204(c) of this title shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 910. Service of Process on Registered Foreign Limited Liability Companies**

(a) Service of legal process upon any foreign limited liability company shall be made by delivering a copy personally to any managing or general agent or manager of the foreign limited liability company in the Seminole Nation or the registered agent of the foreign limited liability company in the Seminole Nation, or by leaving it at the dwelling house or usual place of abode in the Seminole Nation of any such managing or general agent, manager or registered agent, if the registered agent is an individual, or at the registered office or other place of business of the foreign limited liability company in the Seminole Nation. If the registered agent is a corporation, service of process upon it as such may be made by serving, in the Seminole Nation, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any managing or general agent, manager or registered agent, or at the registered office or other place of business of the foreign limited liability company in the Seminole Nation, to be effective must be delivered thereat at least six (6) days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the managing or general agent, manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign limited liability company upon the BCR Commission, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. In the event service is affected through the BCR Commission in accordance with this subsection, the BCR Commission shall forthwith notify the foreign limited liability company by letter, certified mail, return receipt requested, directed to the foreign limited liability company at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the BCR Commission pursuant to this subsection. It

shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the BCR Commission that service is being affected pursuant to this subsection, and to pay to the BCR Commission the sum of Fifty Dollars (\$50.00). The BCR Commission shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the BCR Commission, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The BCR Commission shall not be required to retain such information for a period longer than five (5) years from the Secretary's receipt of the service of process.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**Section 911. Service of Process on Unregistered Foreign Limited Liability Companies**

(a) Any foreign limited liability company which shall do business in the Seminole Nation without having registered under section 902 of this title shall be deemed to have thereby appointed and constituted the BCR Commission of the Seminole Nation its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any Seminole Nation or federal Court in the Seminole Nation arising or growing out of any business done by it within the Seminole Nation. The doing of business in the Seminole Nation by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the Seminole Nation.

(b) Whenever the words "doing business," "the doing of business" or "business done in this State," by any such foreign limited liability company are used in this section, they shall mean the course or practice of carrying on any business activities in the Seminole Nation, including, without limiting the generality of the foregoing, the solicitation of business or orders in the Seminole Nation.

(c) In the event of service upon the BCR Commission in accordance with subsection (a) of this section, the BCR Commission shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the BCR Commission by the plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the BCR Commission. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the BCR Commission that service is being made pursuant to this subsection, and to pay to the BCR Commission the sum of Fifty Dollars (\$50.00). The BCR Commission shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the return date thereof, and the day and hour when the service was made. The BCR Commission shall not be required to retain such information for a period longer than five (5) years from the receipt of the service of process.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER TEN DERIVATIVE ACTIONS**

### **Section 1001. Right to Bring Action**

A member or an assignee of a limited liability company interest may bring an action in the District Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1002. Proper Plaintiff**

- (a) In a derivative action
  - (1) the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and at the time of the transaction of which the plaintiff complains; or
  - (2) the plaintiff's status as a member or an assignee of a limited liability company interest had devolved upon the plaintiff by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 1003. Complaint**

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1004. Expenses**

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]



## **CHAPTER ELEVEN MISCELLANEOUS**

### **Section 1101. Construction and Application of Chapter and Limited Liability Company Agreement**

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(c) To the extent that, at law or in equity, a member or manager or other person has duties, including fiduciary duties, and liabilities relating thereto to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement:

- (1) Any such member or manager or other person acting under the limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager or to any such other person for the member's or manager's or other person's good faith reliance on the provisions of the limited liability company agreement; and
- (2) The member's or manager's or other person's duties and liabilities may be expanded or restricted by provisions in the limited liability company agreement.

(d) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1102. Short Title**

This chapter may be cited as the "Seminole Nation Limited Liability Company Act."

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1103. Severability**

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 1104. Cases Not Provided for in this Chapter**

In any case not provided for in this chapter, the rules of law and equity, including the law of merchant, shall govern.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 1105. Fees**

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the BCR Commission for the use of the Seminole Nation:

- (1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to section 103(b) of this title, a fee in the amount of Seventy-Five Dollars (\$75.00).
- (2) Upon the receipt for filing of a certificate under section 104(b) of this title, a fee in the amount of Fifty Dollars (\$50.00), upon the receipt for filing of a certificate under section 104(c) of this title, a fee in the amount of Fifty Dollars (\$50.00) and a further fee of Two Dollars (\$2.00) for each limited liability company affected by such certificate, and upon the receipt for filing of a certificate under section 104(d) of this title, a fee in the amount of Two Dollars and Fifty Cents (\$2.50).
- (3) Upon the receipt for filing of a certificate of limited liability company domestication under section 212 of this title, a certificate of transfer or a certificate of transfer and continuance under section 213 of this title, a certificate of conversion to limited liability company under section 214 of this title, a certificate of conversion to a non-Seminole Nation entity under section 216 of this title, a Certificate of Formation under section 201 of this title, a fee in the amount of Seventy Dollars (\$70.00); and upon the receipt for filing of a certificate of amendment under section 202 of this title, a certificate of cancellation under section 203 of this title, a certificate of merger or consolidation under section 209 of this title, a restated Certificate of Formation under section 208 of this title, a certificate of amendment of a certificate with a future effective date or time under section 206(f) of this title, a certificate of termination of a certificate with a future effective date or time under section 206(f) of this title, a certificate of correction under section 211 of this title, or a certificate of revival under section 1109 of this title, a fee in the amount of Eighty Dollars (\$80.00).
- (4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of Thirty Dollars (\$30.00) for each copy certified.

- (5) The BCR Commission may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of Ten Dollars (\$10.00) shall be paid for the first page and Two Dollars (\$2.00) for each additional page. The BCR Commission may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of Two Dollars (\$2.00) shall be paid therefor. Notwithstanding the provisions of this Code granting access to public records, the BCR Commission shall issue only photocopies, microfiche or electronic image copies of records in exchange for the fees described above.
- (6) Upon the receipt for filing of an application for registration as a foreign limited liability company under section 902 of this title, a certificate under section 905 of this title or a certificate of cancellation under section 906 of this title, a fee in the amount of One Hundred Dollars (\$100.00).
- (7) Upon the receipt for filing of a certificate under section 904(c) of this title, a fee in the amount of Fifty Dollars (\$50.00), upon the receipt for filing of a certificate under section 904(d) of this title, a fee in the amount of Fifty Dollars (\$50.00) and a further fee of Two Dollars (\$2.00) for each foreign limited liability company affected by such certificate, and upon the receipt for filing of a certificate under section 904(e) of this title, a fee in the amount of Two Dollars and Fifty Cents (\$2.50).
- (8) For preclearance of any document for filing, a fee in the amount of Two Hundred Fifty Dollars (\$250.00).
- (9) For preparing and providing a written report of a record search, a fee in the amount of Thirty Dollars (\$30.00).
- (10) For issuing any certificate of the BCR Commission, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (4) of this subsection, a fee in the amount of Thirty Dollars (\$30.00), except that for issuing any certificate of the BCR Commission that recites all of a limited liability company's filings with the BCR Commission, a fee of One Hundred Twenty Five Dollars (\$125.00) shall be paid for each such certificate.
- (11) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of Fifty Dollars (\$50).
- (12) The BCR Commission Director may in his or her discretion charge a fee of Sixty Dollars (\$60.00) for each check received for payment of any fee

that is returned due to insufficient funds or the result of a stop payment order.

(b) The BCR Commission Director may, in his or her discretion, permit the extension of credit for the fees required by this section upon such terms as the Director shall deem to be appropriate.

(c) The BCR Commission shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least Five Hundred Dollars (\$500.00), but not more than Fifteen Hundred Dollars (\$1,500.00), from which the BCR Commission Director may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of Seminole Nation moneys to the credit of the BCR Commission and shall be disbursable on order of the BCR Commission.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 1106. Reserved Power of Seminole Nation to Alter or Repeal Chapter**

All provisions of this chapter may be altered from time to time or repealed by the General Council of the Seminole Nation and all rights of members and managers are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

#### **Section 1107. Treatment of Limited Liability Companies**

(a) For purposes of any fee imposed by the Seminole Nation or any instrumentality, agency or political subdivision of the Seminole Nation, a limited liability company formed under this chapter or qualified to do business in the Seminole Nation as a foreign limited liability company shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of any fee imposed by the Seminole Nation or any instrumentality, agency or political subdivision of the Seminole Nation, a member or an assignee of a member of a limited liability company formed under this chapter or qualified to do business in the Seminole Nation as a foreign limited liability company shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

(b) Every domestic limited liability company and every foreign limited liability company registered to do business in the Seminole Nation shall pay an annual fee, for the use of the Seminole Nation, in the amount of Two Hundred Dollars (\$200.00).

(c) The annual fee shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of a Certificate of Formation. The BCR

Commission shall receive the annual fee. If the annual fee remains unpaid after the due date, the fee shall bear interest at the rate of one and one-half percent (1 ½%) for each month or portion thereof until fully paid.

(d) The BCR Commission shall, at least sixty (60) days prior to the first day of June of each year, cause to be mailed to each domestic limited liability company and each foreign limited liability company required to comply with the provisions of this section in care of its registered agent in the Seminole Nation an annual statement for the fee to be paid hereunder.

(e) In the event of neglect, refusal or failure on the part of any domestic limited liability company or foreign limited liability company to pay the annual fee to be paid hereunder on or before the 1st day of June in any year, such domestic limited liability company or foreign limited liability company shall pay the sum of One Hundred Dollars (\$100.00) to be recovered by adding that amount to the annual fee and such additional sum shall become a part of the fee and shall be collected in the same manner and subject to the same penalties.

(f) In case any domestic limited liability company or foreign limited liability company shall fail to pay the annual fee due within the time required by this section, and in case the agent in charge of the registered office of any domestic limited liability company or foreign limited liability company upon whom process against such domestic limited liability company or foreign limited liability company may be served shall die, resign, refuse to act as such, remove from the Seminole Nation or cannot with due diligence be found, it shall be lawful while default continues to serve process against such domestic limited liability company or foreign limited liability company upon the BCR Commission. Such service upon the BCR Commission shall be made in the manner and shall have the effect stated in section 105 of this title in the case of a domestic limited liability company and section 910 of this title in the case of a foreign limited liability company and shall be governed in all respects by said sections.

(g) The annual fee shall be a debt due from a domestic limited liability company or foreign limited liability company to the Seminole Nation, for which an action at law may be maintained after the same shall have been in arrears for a period of one month. The fee shall also be a preferred debt in the case of insolvency.

(h) A domestic limited liability company or foreign limited liability company that neglects, refuses or fails to pay the annual fee when due shall cease to be in good standing as a domestic limited liability company or registered as a foreign limited liability company in the Seminole Nation.

(i) A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered by reason of the failure to pay an annual fee shall be restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company that is registered in the Seminole Nation upon the payment of the annual fee and all penalties and interest thereon for each year for which such domestic limited liability company or foreign limited liability company neglected, refused or failed to pay an annual fee.

(j) On the motion of the Attorney General or upon request of the BCR Commission, whenever any annual fee due under this chapter from any domestic limited liability company or foreign limited liability company shall have remained in arrears for a period of three months after the fee shall have become payable, the BCR Commission may withdraw its registration to do business within the Seminole Nation.

(k) A domestic limited liability company that has ceased to be in good standing by reason of its neglect, refusal or failure to pay an annual fee shall remain a domestic limited liability company formed under this chapter. The BCR Commission shall not accept for filing any certificate, except a certificate of resignation of a registered agent when a successor registered agent is not being appointed, required or permitted by this chapter to be filed in respect of any domestic limited liability company or foreign limited liability company which has neglected, refused or failed to pay an annual fee, and shall not issue any certificate of good standing with respect to such domestic limited liability company or foreign limited liability company, unless or until such domestic limited liability company or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company duly registered in the Seminole Nation.

(l) A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in the Seminole Nation by reason of its neglect, refusal or failure to pay an annual fee may not maintain any action, suit or proceeding in the jurisdiction of the Seminole Nation until such domestic limited liability company or foreign limited liability company has been restored to and has the status of a domestic limited liability company or foreign limited liability company in good standing or duly registered in the Seminole Nation. An action, suit or proceeding may not be maintained in the jurisdiction of the Seminole Nation by any successor or assignee of such domestic limited liability company or foreign limited liability company on any right, claim or demand arising out the transaction of business by such domestic limited liability company after it has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in the Seminole Nation until such domestic limited liability company or foreign limited liability company, or any person that has acquired all or substantially all of its assets, has paid any annual fee then due and payable, together with penalties and interest thereon.

(m) The neglect, refusal or failure of a domestic limited liability company or foreign limited liability company to pay an annual fee shall not impair the validity of any contract, deed, mortgage, security interest, lien or act or such domestic limited liability company or foreign limited liability company or prevent such domestic limited liability company or foreign limited liability company from defending any action, suit or proceeding with the District Court.

(n) A member or manager of a domestic limited liability company or foreign limited liability company is not liable for the debts, obligations or liabilities of such domestic limited liability company or foreign limited liability company solely by reason of the neglect, refusal or failure of such domestic limited liability company or foreign limited liability company to pay an annual fee or by reason of such domestic limited liability company or foreign limited liability company ceasing to be in good standing or duly registered.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1108. Cancellation of Certificate of Formation for Failure to Pay Taxes**

(a) The Certificate of Formation of a domestic limited liability company shall be deemed to be canceled if the domestic limited liability company shall fail to pay the annual fee due under section 1107 of this title for a period of three (3) years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(b) A list of those domestic limited liability companies whose certificates of formation were canceled on June 1 of such calendar year pursuant to section 1108(a) of this title shall be filed with the BCR Commission. On or before October 31 of each calendar year, the BCR Commission shall publish such list on the internet or on a similar medium for a period of one (1) week and shall advertise the website or other address where such list can be accessed in at least one (1) newspaper of general circulation in the Seminole Nation.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1109. Revival of Domestic Limited Liability Company**

(a) A domestic limited liability company whose Certificate of Formation has been canceled pursuant to section 104(d) or section 1108(a) of this title may be revived by filing with the BCR Commission a certificate of revival accompanied by the payment of the fee required by section 1105(a)(3) of this title and payment of the annual fee due under section 1107 of this title and all penalties and interest thereon for each year for which such domestic limited liability company neglected, refused or failed to pay such annual fee, including each year between the cancellation of its Certificate of Formation and its revival. The certificate of revival shall set forth:

- (1) The name of the limited liability company at the time its Certificate of Formation was canceled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived which must be in accordance with § 102 of this title;
- (2) The date of filing of the original Certificate of Formation of the limited liability company;
- (3) The address of the limited liability company's registered office in the Seminole Nation and the name and address of the limited liability company's registered agent in the Seminole Nation;
- (4) A statement that the certificate of revival is filed by one or more persons authorized to execute and file the certificate of revival to revive the limited liability company; and
- (5) Any other matters the persons executing the certificate of revival determine to include therein.

(b) The certificate of revival shall be deemed to be an amendment to the Certificate of Formation of the limited liability company, and the limited liability company shall not be

required to take any further action to amend its Certificate of Formation under section 202 of this title with respect to the matters set forth in the certificate of revival.

(c) Upon the filing of a certificate of revival, a limited liability company shall be revived with the same force and effect as if its Certificate of Formation had not been canceled pursuant to section 104(d) or section 1108(a) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited liability company, its members, managers, employees and agents during the time when its Certificate of Formation was canceled pursuant to section 104(d) or section 1108(a) of this title, with the same force and effect and to all intents and purposes as if the Certificate of Formation had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited liability company at the time its Certificate of Formation was canceled pursuant to section 104(d) or section 1108(a) of this title or which were acquired by the limited liability company following the cancellation of its Certificate of Formation pursuant to section 104(d) or section 1108(a) of this title, and which were not disposed of prior to the time of its revival, shall be vested in the limited liability company after its revival as fully as they were held by the limited liability company at, and after, as the case may be, the time its Certificate of Formation was canceled pursuant to section 104(d) or section 1108(a) of this title. After its revival, the limited liability company shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its members, managers, employees and agents prior to its revival as if its Certificate of Formation had at all times remained in full force and effect.

[HISTORY: Enacted by TO 2006-11, September 2, 2006; amended by TO 2007-16, December 1, 2007.]

#### **Section 1110. Scope of Act**

(a) The provisions of the Seminole Nation of Oklahoma Limited Liability Company Act shall be applicable to every limited liability company existing as of August 1, 2006, or thereafter formed or qualified to transact business within the Seminole Nation, and to all securities thereof, except to the extent that:

- (1) any such limited liability company is expressly excluded from the operation of the Seminole Nation of Oklahoma Limited Liability Company Act or portions thereof; or
- (2) special provisions concerning any such limited liability company conflict with the provisions of the Seminole Nation of Oklahoma Limited Liability Company Act, in which case such special provisions shall govern.

(b) Any conflicts with the provisions of the Seminole Nation of Oklahoma Limited Liability Company Act and any fee or unclaimed property laws of the Seminole Nation shall be governed by the fee or unclaimed property provisions, including those provisions relating to personal liability of corporate officers and directors.

(c) The provisions of the Seminole Nation of Oklahoma Limited Liability Company Act concerning qualifications of foreign limited liability companies and providing requirements



and duties relating to such limited liability companies shall apply to insurance companies until such times as an insurance commission or similar agency to govern insurance is formed.

(d) The provisions of the Seminole Nation of Oklahoma Limited Liability Company Act concerning qualifications of foreign limited liability companies and providing requirements and duties relating to such limited liability companies shall apply to foreign transportation companies until such time as a transportation commission or similar agency to govern transportation is formed.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

## **CHAPTER TWELVE OTHER LAWS**

### **Section 1201. Rights, Liabilities and Duties Under Prior Statutes**

All rights, privileges and immunities vested or accrued by and pursuant to any laws enacted prior to the adoption or subsequent amendment of the Seminole Nation of Oklahoma Limited Liability Company Act, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and pursuant to laws enacted prior to the adoption or amendment of the Seminole Nation of Oklahoma Limited Liability Company Act, shall not be impaired, diminished or affected.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

### **Section 1202. Provisions as Cumulative**

The provisions of this act shall be cumulative to existing law.

[HISTORY: Enacted by TO 2006-11, September 2, 2006.]

**SEMINOLE COURTS CODE**  
**TITLE 5**  
**COURT ADMINISTRATION CODE**  
**INDEX**

<b>SEMINOLE COURTS CODE TITLE 5 COURT ADMINISTRATION CODE INDEX .....</b>	<b>i</b>
<b>TITLE 5 COURT ADMINISTRATION CODE .....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>1</b>
Section 1.    Authorization .....	1
Section 2.    Definitions .....	1
Section 3.    Territorial Jurisdiction .....	2
Section 4.    Civil Jurisdiction .....	2
Section 5.    Criminal Jurisdiction .....	3
Section 6.    Juvenile Jurisdiction .....	3
Section 7.    Law to Be Applied .....	3
Section 8.    Amendments .....	3
<b>CHAPTER ONE DISTRICT COURT .....</b>	<b>4</b>
Section 101.  Composition of District Court.....	4
Section 102.  Minimum Qualifications of Judge of the District Courts .....	4
Section 103.  Manner of Selection of Justices and Judges .....	5
Section 104.  Term of Office.....	7
Section 105.  Oath of Officer .....	7
Section 106.  Duties and Powers of Judges .....	7
Section 107.  Trial Panel.....	8
Section 108.  Special Appointments.....	8
Section 109.  Compensation of Judges .....	8
Section 110.  Removal of Judges .....	9
Section 111.  Disqualifications Conflict of Interest .....	9
Section 112.  Decisions.....	10
Section 113.  Records .....	10
Section 114.  Files .....	11
Section 115.  Motion Day .....	11
Section 116.  Magistrates.....	11
Section 117.  Guardian Ad Litem Selection .....	12
Section 118.  Public Defender Selection .....	12

Section 119.	RESERVED .....	13
Section 120.	Practice Before the District Court and Supreme Court .....	13
<b>CHAPTER TWO SUPREME COURT .....</b>		<b>14</b>
Section 201.	General Provisions .....	14
Section 202.	Composition of the Supreme Court.....	14
Section 203.	Minimum Qualifications of Justices.....	15
Section 204.	Selection of Justices .....	16
Section 205.	Term of Office.....	16
Section 206.	Oath of Office .....	16
Section 207.	Duties of Justices.....	16
Section 208.	RESERVED .....	17
Section 209.	Compensation of Justices .....	17
Section 210.	Removal of Justices .....	18
Section 211.	Disqualifications, Conflict of Interest .....	18
Section 212.	Decisions.....	18
Section 213.	Special Appointments.....	19
Section 214.	Supreme Court Action on Appeals.....	19
Section 215.	Terms of the Court .....	19
Section 216.	Court Fund .....	20
<b>CHAPTER THREE COMMUNITY COURT .....</b>		<b>21</b>
Section 301.	Creation and Purpose.....	21
Section 302.	Jurisdiction.....	21
Section 303.	Judges .....	21
Section 304.	Court Clerk.....	21
Section 305.	Authority.....	22
Section 306.	Deferred and Alternative Adjudication .....	22
<b>CHAPTER FOUR COURT CLERK.....</b>		<b>23</b>
Section 401.	Establishment .....	23
Section 402.	Selection of Court Clerk .....	23
Section 403.	Selection of Deputy Court Clerks .....	23
Section 404.	Clerk to Serve Supreme and District Courts.....	24
Section 405.	Clerk as Department Director .....	24
Section 406.	Powers and Duties .....	24
Section 407.	Seal .....	25

Section 408.	Certification of True Copies .....	25
Section 409.	Courts Always Open.....	26
Section 410.	Trials and Hearings – Order in Chambers .....	26
Section 411.	Clerk’s Office and Orders by the Clerk .....	26
Section 412.	Notice of Orders or Judgments.....	27
Section 413.	Books and Records Kept by the Clerk and Entries Therein.....	27
Section 414.	Stenographic Report or Transcript as Evidence .....	28
Section 415.	Judgment Docket.....	28
Section 416.	Execution Docket .....	28
Section 417.	Clerk May Collect Judgment and Costs .....	29
Section 418.	Clerks to Issue Writs and Orders .....	29
Section 419.	Clerk to File and Preserve Papers.....	29
Section 420.	Each Case to be Kept Separate.....	29
Section 421.	Endorsements .....	29
Section 422.	Entry on Return of Summons.....	30
Section 423.	Material for Record .....	30
Section 424.	Memorializing Record.....	30
Section 425.	Clerk to Keep Court Records, Books and Papers--Statistical and Other Information .....	30
Section 426.	Applicable to District and Supreme Court.....	31
Section 427.	Bonds .....	31
<b>CHAPTER FIVE CHIEF OF THE LIGHTHORSE POLICE DEPARTMENT - PROCESS.....</b>		<b>32</b>
Section 501.	Style of Process .....	32
Section 502.	Appointment of Substitute for Lighthouse Police Department Chief .....	32
Section 503.	Lighthouse Police Department Chief to Endorse Time of Receipt on Process .....	32
Section 504.	Lighthouse Police Department Chief to Execute and Return Process.....	32
Section 505.	When Bailiff or Lighthouse Police Department Chief May Adjourn Court .	33
Section 506.	Other Duties of Lighthouse Police Department Chief--Disposition of Fees.	33
<b>CHAPTER SIX BONDS AND SURETIES.....</b>		<b>34</b>
Section 601.	Justification of Surety .....	34
Section 602.	Qualifications of Surety .....	34
Section 603.	Real Estate Mortgage as Bond .....	34
Section 604.	Valuation of Real Estate .....	34

Section 605.	False Valuation—Penalty .....	35
Section 606.	Action by Nation or Governmental Department—No Bond Required .....	35
Section 607.	Appearance Bond—Enforcement .....	35
<b>CHAPTER SEVEN MISCELLANEOUS .....</b>		<b>37</b>
Section 701.	Deputy May Perform Official Duties .....	37
Section 702.	Affirmation .....	37
Section 703.	Publication Notice .....	37
Section 704.	Action on Official Bond .....	37
Section 705.	Several Actions on Same Security .....	38
Section 706.	Immaterial Errors to be Disregarded .....	38
Section 707.	Payments Into Court for Minors and Incompetents .....	38
Section 708.	Conserving Moneys Obtained for Minors or Incompetent Persons .....	39
Section 709.	Sharing of Judicial Officers .....	39
Section 710.	Sharing of Other Judicial Personnel.....	39
Section 711.	Sharing of Material Resources .....	40
Section 712.	Sharing of Financial Resources.....	40
Section 713.	Copies of Laws.....	40
Section 714.	Cooperation by Federal Employees .....	41
Section 715.	Effect of Prior Decisions of the Court .....	41
Section 716.	Judicial Review of Legislative and Executive Actions .....	41
Section 717.	Travel.....	42
Section 718.	Action When No Procedure Provided .....	42

**TITLE 5**  
**COURT ADMINISTRATION CODE**  
**INTRODUCTION**

**Section 1. Authorization**

There is hereby established, ordained, and activated, pursuant to the Constitution of the Seminole Nation of Oklahoma, the Judicial Branch of the Government of the Nation with a lower court known as the District Court and an upper court known as the Supreme Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 2. Definitions**

The following words have the meanings given below when used in this Title, unless a different meaning is obvious from the context:

- (a) "Clerk" shall mean the clerk of the court.
- (b) "Code" shall mean the statutory laws of the Seminole Nation of Oklahoma.
- (c) "Common Law" shall mean the common law of the Seminole Nation of Oklahoma unless otherwise indicated. This term shall include traditional tribal customs and usages.
- (d) "Community Court" shall mean the Seminole Nation Community Court created under Chapter 3 of this Title.
- (e) "Constitution" shall mean the Constitution of the Seminole Nation of Oklahoma unless otherwise indicated.
- (f) "District Court" shall mean the lower or general trial court operating within the jurisdiction of the Nation created pursuant to the Seminole Constitution Article XVI §1.
- (g) "General Council" shall mean the General Council of the Seminole Nation of Oklahoma.
- (h) "He," "him," and "his" shall mean the masculine, feminine and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.
- (i) "Judicial Officer" shall mean generally any judge or justice appointed by the General Council pursuant to this Title.
- (j) "Jurisdiction" shall mean the Indian country within the territorial jurisdiction of the Seminole Nation of Oklahoma.

(k) "Nation" or "Tribe" and variants thereof, both uppercase and lowercase, shall mean the Seminole Nation of Oklahoma unless otherwise indicated.

(l) "Statute" shall mean any law duly adopted by the General Council of the Seminole Nation of Oklahoma unless otherwise indicated.

(m) "Supreme Court" shall mean the court of last resort to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

### **Section 3. Territorial Jurisdiction**

The territorial jurisdiction of the courts shall extend to all territory described as Indian country within the meaning of section 1151 of Title 18 of the United States code over which the Nation has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by agencies of the Nation in their own name, all waters, minerals and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 4. Civil Jurisdiction**

The courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Nation including common law, over all general civil claims which arise within the Nation's jurisdiction, and over all transitory claims in which the defendant may be served within the Nation's jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the court, or served anywhere in cases arising within the territorial jurisdiction of the court, or served anywhere in cases arising within the territorial jurisdiction of the Nation, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the court shall be considered consent to the jurisdiction of the court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]



## **Section 5. Criminal Jurisdiction**

The courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Nation insofar as not prohibited by federal law.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 6. Juvenile Jurisdiction**

The Juvenile Division of the District Court shall have the exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the court, or when jurisdiction is transferred to the court pursuant to law. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 7. Law to Be Applied**

The courts shall apply the Constitution and the provisions of all statutory law heretofore or hereafter adopted by the Nation. In matters not covered by statute, the court shall apply traditional tribal customs and usages, which shall be called the common law. When in doubt as to the common law, the court may request the advice of counselors and tribal elders familiar with them. In any dispute not covered by the Constitution, statutes, or common law, the court may apply any laws of the United States or any State which would be cognizable in the court of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part 11 of Title 25 of the Code of Federal Regulations, except those sections thereof which are effective when the Nation receives certain funding from the Bureau of Indian Affairs, nor State law shall be binding upon the court, unless specifically incorporated into tribal law by statute or by a decision of the Tribal Courts adopting some federal or state law as common law.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 8. Amendments**

The General Council shall have the authority to alter, amend, or repeal any provision of this Title or to add new sections to this Title in its discretion.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER ONE DISTRICT COURT**

### **Section 101. Composition of District Court**

(a) Pursuant to the Constitution Article XVI § 4 there is hereby created a District Court which shall consist of the Chief Judge, and such District Judges, Special Judges, and magistrates as may be appointed according to law.

(b) The District Court Judges only shall select one of their members to act as Chief Judge for a two-year period.

(c) The District Court Chief Judge shall:

- (1) Ensure that laws, regulations, and court policies are followed;
- (2) Monitor court caseloads;
- (3) Develop and implement court plans;
- (4) Monitor magistrate judges;
- (5) Oversee the use of jurors;
- (6) Ensure court security and emergency preparedness;
- (7) Resolve informal disputes;
- (8) Review District Court budgets and spending;
- (9) Supervise the Court clerk, Deputy Court clerks;
- (10) Subject to the confirmation of the Supreme Court, appoint such magistrates as may be necessary for the convenient functioning of the Court; and
- (11) Ensure that decisions and orders are rendered promptly.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

### **Section 102. Minimum Qualifications of Judge of the District Courts**

(a) A judge of the District Court shall:

- (1) be a licensed attorney who:
  - (A) is an enrolled member of a federally recognized Indian tribe;

- (B) is in good standing with the licensing authorities where licensed;
  - (C) possesses a demonstrated background in tribal court practice;
- (2) have demonstrated moral integrity and fairness in his business, public and private life;
  - (3) have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of ten years next preceding his appointment. The ten-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction;
  - (4) have regularly abstained from the excessive use of alcohol and use of illegal drugs or psychotoxic chemical solvents;
  - (5) be not less than twenty-five (25) years of age;
  - (6) not be a member of the General Council, or the holder of any other elective Office of this Nation, provided, that a candidate who is a member of the General Council, or the holder of some other elective Office of the Nation, may be confirmed as a judge subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(b) When selecting candidates for appointment pursuant to section 103 of this Title, preference shall be given first to qualified members of the Nation, and next to enrolled members of other Indian Tribes.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Manner of Selection of Justices and Judges**

Judges and justices of the Nation shall be nominated by the Principal Chief and confirmed by the General Council upon a vacancy occurring in a judicial office in the following manner:

(a) The court clerk shall notify the Office of the Principal Chief ninety (90) days prior to the expiration of the term of office of a Supreme Court Justice or District Judge. In the event of a vacancy caused by resignation or death of Supreme Court Justice or District Judge, the court clerk shall promptly (no later than five (5) business days following the date of the vacancy) notify the Office of the Principal Chief of the vacancy.

(b) Within thirty (30) days after receipt of notice of a vacancy, the Principal Chief shall cause a notice of the vacancy to be published once in the Nation's newspaper, at least once

in a law related journal, and once each week for two (2) consecutive weeks in a newspaper of general circulation in the Nation's jurisdiction. The notice shall state the minimum qualifications, salary, and any other pertinent information. Copies of the notice shall be posted at the Nation's Office, the nearest Agency of the Bureau of Indian Affairs, the Nation's Housing Authority office, and such other places as the Principal Chief shall direct. The notice shall direct that inquiries, nominations and applications be directed to the General Council Secretary on or before a date certain who shall keep a permanent record of responses to such notices.

(c) No sooner than twenty (20), nor more than thirty (30) days after the date on which the last required notice was published or posted, the General Council Secretary shall deliver the names and files of all persons nominated or applying for the Judicial Office to the Principal Chief. The Principal Chief shall, in turn, place consideration of the candidate(s) on the agenda of the next regular or special meeting of the General Council.

(d) The General Council shall review the qualifications of the nominees, and may interview nominees at their meetings in their sole discretion. If the General Council interviews nominees, it may also consider additional applicants if he or she is nominated for consideration by the Principal Chief during the meeting.

(e) The General Council shall select one nominee for approval or disapproval at the next regular or special General Council meeting. In making a selection, the General Council shall give preference to those candidates who:

- (1) are members of the Nation;
- (2) have formal education and experience in the legal field.
- (3) have demonstrated that they are familiar with the Constitution, Code and common laws of the Nation.
- (4) have demonstrated decision making ability.

(f) If the nominee for the Judicial Office is confirmed by the General Council, the candidate shall be sworn into office by the Chief Justice, or the next ranking available justice of the Supreme Court. In the event that the members of the Supreme Court have not yet been appointed, the nominee may be sworn into office by the Principal Chief. If the nominee(s) is not confirmed, the Principal Chief shall either republish the notice and establish a new list of eligible candidates for the General Council's consideration, or the General Council may reconsider the candidates on the list gathered from the previous notice. The nomination/confirmation process shall continue until a nominee is confirmed.

(g) The Justices and District Judge(s) selected shall take office immediately upon taking the oath of office.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 104. Term of Office**

(a) All judges of the District Court shall serve four (4) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. All judges so appointed shall be eligible for reappointment at the expiration of their terms. A judge whose term of office has expired and who has not been reappointed by the General Council shall not be permitted to sit as a judge and shall receive no compensation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 105. Oath of Officer**

Before assuming office, each judge, special judge, and magistrate shall take an oath to support and protect the Constitution of the Nation and to administer justice in all causes coming before him with integrity and fairness, without regard to the person before him. The oath shall be administered by the Chief Justice or the next ranking available justice of the Supreme Court as soon after confirmation as may be practical.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 106. Duties and Powers of Judges**

All judges of the District Court, and special judges in cases within their authority, shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto in order to administer justice in all matters within the jurisdiction of the court. In doing so the court shall:

(a) Be responsible for creating and maintaining rules of the court, not in conflict with the Seminole Nation Code of Laws or the Rules of the Supreme Court regulating conduct in the District Court, for the orderly and efficient administration of justice. Prior to the effectiveness of the Court Rules, the court clerk shall:

- (1) publish a copy of the rules in the Nation's newspaper and website, the Mekusukey Mission Council House, the Tribal Complex, the Older American Program building, and all of the Nation's Community Centers for no less than thirty (30) days;
- (2) send a copy of the rules to General Council Secretary by certified mail, return receipt requested and by electronic mail; and
- (3) send a copy of the rules to the Attorney General by certified mail, return receipt requested, and by electronic mail, for inclusion as an appendix to the Seminole Nation Rules of Civil Procedure Code.

(b) Hold court regularly at a designated time and place.

- (c) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (d) Hear and decide all cases properly brought before the court.
- (e) Enter all appropriate orders and judgments.
- (f) Issue all appropriate warrants and subpoenas.
- (g) Keep all court and other records as may be required.
- (h) Perform the duties of the clerk in his absence.
- (i) The judges shall annually elect from among themselves a Chief Judge.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 107. Trial Panel**

RESERVED.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 108. Special Appointments**

(a) Whenever, due to vacancies in office, disqualification of judges, or other cause, a trial panel cannot be convened from the available judges, or an additional Judicial Officer is needed to efficiently dispense with the business of the District Court, the Supreme Court may request the General Council to appoint one or more duly qualified magistrates or justices to sit on the tribal panel, make one or more special appointments from among the members of the Bar of the court to act as a special judge to hear specific named cases, or cases filed prior to the date a trial panel of regular judges can be convened, until the vacancy is filled or the special judge is no longer needed.

(b) No special procedure need be followed in making such appointments and such special judges need not meet the qualification of section 102(a)(1)(A) of this Title.

(c) Whenever a justice of the Supreme Court sits on the trial panel that justice may not participate in any appeal of the case to the Supreme Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 109. Compensation of Judges**

(a) The compensation of all judges of the District Court shall be set by appropriate legislation of the General Council. No judge shall have his compensation reduced during his

term of office, except that if funds are unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this section shall prohibit the General Council from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a judge or magistrate of the District Court, and shall in return have control over the compensation of such judges or magistrates. In such situations the General Council shall recommend to the funding party the compensation of District Judges and magistrates.

(c) Subsection (a) of this section shall not apply to magistrates and special judges. The compensation of all magistrates and special judges shall be set by order of the General Council from available appropriated funds, or from funds made available pursuant to an agreement entered into according to subsection (b) of this section.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 110. Removal of Judges**

(a) The judges of the District Court shall be removed only for cause by the General Council. The term “cause” shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, or a violation of the Model Code of Judicial Conduct promulgated by the American Bar Association.

(b) Magistrates shall serve at the pleasure of the District Court. [HISTORY:

Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 111. Disqualifications Conflict of Interest**

(a) No judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother; brother; sister; grandfather; grandmother; or any legal dependent. A judge should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party of interest in such case or the judge may raise the question of conflict of interest. Upon decision by the judge concerned or the Supreme Court that disqualification is appropriate, another judge shall be assigned to hear the matter before the court.

(c) Any judge otherwise disqualified because he is related to one or more of the parties in one of the relationships enumerated in subsection (a) of this section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open court and of their right to have a different judge hear the case, and consent to further action by that judge in the case in open court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 112. Decisions**

(a) Each decision of the District Court at trial shall be recorded on a form approved by the Supreme Court for such purpose, or embodied in written findings of fact and conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the court to be true, the court's decisions, and the conclusions of law supporting the court's decisions.

(b) In a case tried to a Judicial Panel, the Presiding Judge shall sign such form or decision indicating that the decision is the true decision of a majority of the trial panel on the case whether or not the Presiding Judge agreed with that decision.

(c) The decision form or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 113. Records**

The District Court shall be a Court of Record.

(a) In all court proceedings, the court reporter, which may be the clerk in the absence of an official court reporter, shall record the proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the reporter shall cause a transcript to be made of the recording upon the request of any party or the Court as a permanent part of the case record. Court reporters may be licensed by the Supreme Court, and shall be allowed such fees from the parties for their services as shall be set by rule of the Supreme Court.

(b) To preserve the integrity of the electronic record, the reporter shall store the recording in a safe place and release it only to the relevant court or pursuant to an order of a Tribal Judge or Justice.

(c) The clerk shall keep a file bearing the case name and number of every written document filed in the case.

(d) All court records shall be public records except as otherwise provided by law.

(e) After five (5) years, court records except judgments, appearances, and other dockets may be reproduced on computer tape or disk, microfilm, or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.



(f) The Supreme Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and the public.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 114. Files**

(a) Except as otherwise provided by law, such as in juvenile cases, court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

(b) Any person desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the clerk, or a judge and in their presence to insure the integrity of court records. Under no circumstances shall anyone, except a judge or a licensed advocate, attorney or the clerk taking a file to a judge in his chambers or a courtroom, take a file from the clerk's office.

(c) A copy of any document contained in such a file may be obtained from the clerk by any person for a reasonable copy fee, to be set by rule of the Supreme Court. The clerk is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office. The Supreme Court by rule may provide for such certification.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 115. Motion Day**

Unless conditions make it impractical, the District Court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place, and on such notice, if any, as he considers reasonable, may make orders for the advancement, conduct, and hearing of actions, or, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 116. Magistrates**

(a) Magistrates may be appointed as necessary for the convenient functioning of the court. These magistrates shall have the authority to issue arrest and search warrants, search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters as may be determined

by Rules of the Supreme Court. Magistrates shall meet the minimum qualifications for judges of the District Court except that section 102(a)(1)(A) shall not apply. Magistrates shall serve for two (2) year periods.

(b) Magistrates shall serve at the pleasure of the General Council and may be removed with or without cause at any time.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 117. Guardian Ad Litem Selection**

A Guardian Ad Litem shall:

(a) be a licensed attorney who

(1) is in good standing with the licensing authorities where licensed; and

(2) possesses a demonstrated background in tribal court practice.

(b) When selecting candidates, preference shall be given first to qualified members of the Nation, and next to enrolled members of other Indian tribes, and then to non-Indians.

(c) Subject to approval of the District Court, the Chief District Judge shall appoint the Guardian Ad Litem to serve a one (1) year term.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

### **Section 118. Public Defender Selection**

The Public Defender shall:

(a) be a licensed attorney who

(1) is in good standing with the licensing authorities where licensed; and

(2) possesses a demonstrated background in tribal court practice.

(b) When selecting candidates, preference shall be given first to qualified members of the Nation, and next to enrolled members of other Indian tribes, and then to non-Indians.

(c) Subject to approval of the District Court, the Chief District Judge shall appoint the Public Defender to serve a one (1) year term.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

**Section 119. RESERVED**

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 120. Practice Before the District Court and Supreme Court**

(a) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the courts.

(b) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the General Council Secretary and the office of the clerk of the Supreme and District Court. Prior to the effectiveness of the Court Rules, the Supreme Court clerk shall:

- (1) post a copy of the rules in the Nation's newspaper and website, the Mekusukey Mission Council House, the Tribal Complex, the Older American Program building, and all of the Nation's Community Centers for no less than thirty (30) days;
- (2) send a copy of the rules to General Council Secretary by certified mail, return receipt requested and by electronic mail; and
- (3) send a copy of the rules to the Attorney General by certified mail, return receipt requested, and by electronic mail for inclusion as an appendix to the Seminole Nation Rules of Civil Procedure Code.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

## **CHAPTER TWO SUPREME COURT**

### **Section 201. General Provisions**

The Supreme Court may hear appeals resulting from all final orders or judgments rendered by the District Court, appeals of other orders of the District Court subject to interlocutory appeal by law, and such original actions as may be provided by Tribal law. The Supreme Court shall render its decisions in writing to the parties of interest, file a copy thereof in the Supreme Court clerk's office and the General Council Secretary's office. The Supreme Court clerk shall, at the time of filing of the decision, submit a copy to the official reporter of the decisions of the court. The decision of the Supreme Court shall be final and binding upon the parties.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 202. Composition of the Supreme Court**

(a) The Supreme Court shall consist one (1) Chief Justice, and two (2) Associate Justices.

(b) The justices of the court shall select one of their members to act as Chief Justice for a two-year period.

(c) The Chief Justice shall have the following duties:

- (1) Prepare and submit an annual budget to the General Council concerning the budget requests of the court.
- (2) Perform or delegate performance of all duties of administration of the Supreme Court.
- (3) Ensure that laws, regulations, and court policies are followed;
- (4) Ensure court security and emergency preparedness;
- (5) Review Supreme Court budgets and spending; and
- (6) Supervise Supreme Court staff.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

**Section 203. Minimum Qualifications of Justices**

(a) To be eligible for selection or confirmation as a justice of the Supreme Court, a person shall:

- (1) be a licensed attorney who
  - (A) is an enrolled member of a federally recognized Indian tribe; and
  - (B) is in good standing with the licensing authorities where licensed; and
  - (C) possesses a demonstrated background in tribal court practice.
- (2) have demonstrated moral integrity and fairness in his business, public and private
- (3) life.
- (4) have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of ten (10) years next preceding his appointment. The ten (10) year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
- (5) have regularly abstained from the excessive use of alcohol and use of illegal drugs or psychotoxic chemical solvents.
- (6) be not less than twenty-five (25) years of age.
- (7) not be a member of the General Council, or the holder of any other elective Office of this Nation, provided, that a candidate who is a member of the General Council, or the holder of some other elective Office of the Nation, may be confirmed as a judge subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(b) When selecting candidates for appointment pursuant to section 103 of this Title, preference shall be given first to qualified members of the Nation, and next to enrolled members of other Indian Tribes.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 204. Selection of Justices**

All Supreme Court Justices shall be selected in accordance with the selection provisions of section 103 of this Title.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 205. Term of Office**

Except for the first justices appointed under this Title, all justices of the Supreme Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. Of the first justices appointed under this Title, one justice shall have a term of two (2) years, one shall have a term of four (4) years, and the third shall have a full term of six (6) years. All justices so appointed shall be eligible for reappointment at the expiration of their terms. A justice whose term of office has expired and who has not been reappointed by the General Council shall not be permitted to sit as a justice and shall receive no compensation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 206. Oath of Office**

Before the assuming office each justice shall take an oath to support and protect the Constitution of the Nation and to administer justice in all causes coming before him with integrity and fairness, without regard to the person before him. The oath shall be administered by the Chief Justice, the Principal Chief, or the ranking available justice of the Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 207. Duties of Justices**

All justices of the Supreme Court, unless disqualified for conflict of interest of other cause, shall participate in the deliberation of that body and shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Supreme Court. In doing so the Supreme Court shall:

(a) Be responsible for creating and maintaining rules of the court, not contrary to the Constitution or Code, regulating conduct in the Supreme and District Court to provide for the orderly and efficient administration of justice and the administration of the courts. Such rules shall determine, where not otherwise provided by law, what actions may be taken by a single justice of the court, and shall be filed with the clerk of the court. Prior to the effectiveness of the court Rules, the court clerk shall:

- (1) publish a copy of the rules in the Nation's newspaper and website, the Mekusukey Mission Council House, the Tribal Complex, the Older

American Program building, and all of the Nation's Community Centers for no less than thirty (30) days;

- (2) send a copy of the rules to General Council Secretary by certified mail, return receipt requested and by electronic mail;
  - (3) send a copy of the rules to the Attorney General by certified mail, return receipt requested, and by electronic mail, for inclusion as an appendix to the Seminole Nation Rules of Civil Procedure Code.
- (b) Hear appeals from the District Court at a designated time and place.
  - (c) Enter all appropriate orders and judgments.
  - (d) Keep all appropriate records as may be required.
  - (e) Perform any and all other duties as may be required for the operation of the Supreme Court and the District Court.
  - (f) Supervise the actions of the District Court and all clerks, reporters, bailiffs, and other officers of the courts.
  - (g) Perform any of the duties and powers of a District Judge in appropriate cases.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

**Section 208. RESERVED**

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

**Section 209. Compensation of Justices**

(a) The compensation of all justices of the Supreme Court shall be set by legislation of the General Council. No justice shall have his compensation reduced during his term of office, except that if funds are unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this section shall prohibit the General Council from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a justice of the Supreme Court, and shall in return have control over the compensation of such justice. In such situations the General Council shall recommend to the funding party the compensation of Supreme Court justices.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 210. Removal of Justices**

Justices of the Seminole Nation of Oklahoma shall be removed only for cause by the General Council. The term “cause” shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, or a violation of the Model Code of Judicial Conduct promulgated by the American Bar Association.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

## **Section 211. Disqualifications, Conflict of Interest**

(a) No justice shall hear any case when he has a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A justice should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party in interest in such case or the justice may raise the question of conflict of interest. Upon decision by the justice concerned or the Supreme Court that disqualification is appropriate, a judge, magistrate, or special justice may be appointed to sit on the Supreme Court to hear the matter before the court.

(c) Any justice related to one or more of the parties in one of the relationships enumerated in subsection (a) of this section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open court and of their right to have the interested justice disqualified from the case, and the parties consent in writing filed in the case, or upon the record in open court to the conflict of interest. Normally, the justice knowing of the conflict of interest should simply file an order recusing himself from the action and stating his relationship with the parties. Thereafter, if the parties consent to that justice hearing the action, they should file their written consent for such justice to continue in the cause. If all parties file such consent, the justice may then enter his order withdrawing the recusal on grounds of the consent filed. A consent to the withdrawal of a justice’s recusal may not be revoked.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 212. Decisions**

(a) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties in interest, the District Court in appeal cases, filed in the Supreme Court clerk’s Office and the General Council Secretary’s office, transmitted to the official reporter of the decisions of the court, and recorded on a form approved by the Supreme Court for such purpose. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties before the court, the issues presented on appeal or the substance of the complaint in an action within the court’s original jurisdiction, the relevant facts upon which the decision on appeal was made or as found by the court to be true in an original action, the court’s decision, and the legal principals and reasoning supporting the court’s decision. A written



opinion containing the above information may be filed by the majority or dissent in lieu of the form.

(b) Each justice shall record in writing his decision, or the fact of his not participating when he is disqualified, on each case decided by the Supreme Court as part of the permanent record.

(c) The decision form or court opinion shall be placed in the file of the case on appeal as an official document of the case.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 213. Special Appointments**

Whenever, due to vacancies in office, disqualification of justices, or other cause, three (3) justices cannot be convened to hear and decide the merits of a case before the court, the court, including any disqualified justices, shall request the General Council to make one or more special appointments to hear specific named cases, or cases filed prior to the date three (3) justices can be convened on such cases. No special procedure need be followed in making such appointments and special justices need not meet the qualifications of section 102(a)(1)(A) of this Title. Special appointments by the General Council shall be made by formal action with notice to the parties in a case where appropriate.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; renumbered from Section 214 to Section 213 on August 26,  
2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 214. Supreme Court Action on Appeals**

In any appeal properly before it, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions as shall be just.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; renumbered from Section 215 to Section 214 on August 26,  
2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 215. Terms of the Court**

The regular term of the court shall commence on the third Monday in October of each year, and upon that date the Supreme Court shall convene in its courtroom for the purpose of disposing of the actions and other business before the court. The term shall continue until such time as the court determines that its business is properly disposed of and the term shall then be declared completed. Special terms may be convened at any time upon the call of the Chief Justice for the purpose of dispensing with pressing matters which may not be justly delayed until the regular term of the court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 216 to Section 215 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 216. Court Fund**

Notwithstanding the provisions contained in Title 14 of the Seminole Nation Code of Laws, there is hereby authorized to be maintained by the clerk under the supervision of the court, a fund to be known as the “Court Fund” into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the courts which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. These funds shall be maintained by the court and used exclusively for maintenance and updating of the law library, renovation and moving expense, special events, or supplies upon the written request of the Chief Justice or Chief District Judge. The Court Fund shall not be used for the payment of salaries.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015; renumbered from Section 217 to Section 216 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE COMMUNITY COURT**

### **Section 301. Creation and Purpose**

There is hereby created the Seminole Nation Community Court, which shall serve as a unit under the Seminole Nation District Court. The purpose of the Seminole Nation Community Court is to serve as a forum for deferred and alternative adjudication for criminal and civil violations of the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 302. Jurisdiction**

(a) The jurisdiction of the Seminole Nation Community Court shall be coextensive with that of the Seminole Nation District Court.

(b) Cases may be referred to the Seminole Nation Community Court by the Seminole Nation District Court on the court's own motion, at the request of the Prosecuting Attorney or on motion of a Defendant.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 303. Judges**

(a) Judges for the Seminole Nation Community Court shall meet the same qualifications as judges appointed to serve on the Seminole Nation District Court found in section 102 of this Code.

(b) The General Council shall designate one or more judges to preside over the Seminole Nation Community Court, which judge(s) may be specially appointed or selected from among the appointed District Court judges.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 304. Court Clerk**

The clerk of the Seminole Nation District Court shall serve as the clerk of the Seminole Nation Community Court and shall perform for the Community Court all functions performed for the District Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 305. Authority**

The Seminole Nation Community Court shall have the authority to require defendants to engage in various activities prior to, or in lieu of, formal sentencing by the District Court. These activities include, but are not limited to, the following:

- (a) drug and alcohol assessments
- (b) anger management counseling
- (c) domestic violence counseling
- (d) drug and alcohol treatment
- (e) random drug tests
- (f) probation

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 306. Deferred and Alternative Adjudication**

(a) A case may be referred to the Community Court regardless of whether the defendant enters a plea of not guilty, no contest or guilty.

(b) Successful completion of all requirements imposed by the Community Court shall result in a dismissal of the charge against a defendant regardless of the defendant's plea and shall not be considered to be a conviction even if the defendant entered a plea of not guilty or no contest.

(c) Failure to comply with any assessment, counseling, treatment or other requirement imposed by the Community Court may result in the transfer of the defendant's case to the District Court, provided that reasonable efforts have been made and services have been offered to a defendant.

(d) Failure of a defendant to substantially comply within six (6) months following transfer of a case to the Community Court shall be deemed failure to comply unless good cause is shown to the contrary.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER FOUR COURT CLERK**

### **Section 401. Establishment**

There is hereby established a Court Clerk's Office to be administered by one (1) court clerk and such deputy court clerks as may be necessary.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

### **Section 402. Selection of Court Clerk**

- (a) The court clerk shall be hired, fired, and supervised by the District Court.
- (b) The District Court clerk shall have:
  - (1) at least twenty-four (24) hours of post-secondary education in business or public administration, political science, criminal justice, or law; or
  - (2) at least five (5) years of experience in administration, document management, or the legal field; and
  - (3) never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of ten years next preceding his appointment.
- (c) When selecting candidates, preference shall be given first to qualified members of the Nation, and next to enrolled members of other Indian Tribes, and then to non-Indians.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-09, October 17, 2015.]

### **Section 403. Selection of Deputy Court Clerks**

- (a) The deputy court clerks shall be hired, fired, and supervised by the District Court.
- (b) A deputy District Court clerk shall have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of ten years next preceding his appointment. The ten-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
- (c) When selecting candidates, preference shall be given first to qualified members of the Nation, and next to enrolled members of other Indian Tribes, and then to non-Indians.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

#### **Section 404. Clerk to Serve Supreme and District Courts**

Until such time as the Supreme Court determines that separate clerks are necessary to efficiently administer the business of the courts and funding is available, the court clerk shall serve as the clerk of the Supreme Court and the clerk of the District Court. When serving the Supreme Court, the clerk's title shall be "Clerk of the Supreme Court." When serving the District Court, the clerk's title shall be "Clerk of the District Court."

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA September 2, 2010; renumbered from Section 402 to Section 404 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203]

#### **Section 405. Clerk as Department Director**

The court clerk is a supervisory administrative position of the Judicial Branch of the Government of the Nation with the same rank as Department Director. The court clerk shall serve as the court administrator and shall be charged with the preparation of court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the court's law library, the custody, upkeep, and maintenance of the records, papers, effects, and property of the court and such other matters as shall be assigned to the clerk of the court by law or court rule.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015; renumbered from Section 403 to Section 405 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 406. Powers and Duties**

The court clerk shall have the following powers and duties:

- (a) To undertake all duties and functions otherwise authorized by law, or necessary and proper to administer the courts.
- (b) To collect all fines, fees, and costs authorized or required by law to be paid to the court, to receipt therefore, and to deliver them to the Treasurer of the Seminole Nation for deposit in the Court Fund.
- (c) To accept, when ordered by the court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the clerk is authorized to maintain a bank checking account subject to the oversight of the Supreme Court and to deposit and withdraw funds therefore. This account shall be audited at least once each year by the Nation's Accounting Department or an independent Certified Public Accountant, and the clerk shall obtain a fidelity or performance bond in at least the amount of \$100,000 to guarantee the funds deposited therein in such amount as the Supreme Court shall direct.

(d) To administer oaths, issue summons and subpoenas, certify a true copy of court records, and to accurately keep each and every record of the Supreme and District Court.

(e) To provide a record, in the absence of a court reporter, to accurately and completely record all proceedings and hearings of the courts. If a court reporter is available, the court reporter shall have the authority to administer oaths and undertake such other court functions as shall be provided by law or court rule.

(f) To provide stenographic and clerical services to the court and the Attorney General or Prosecuting Attorney when requested.

(g) To act as librarian, and to keep and maintain the court's law library.

(h) To undertake all duties assigned or delegated to the clerk's office found in other provisions of the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015; renumbered from Section 404 to Section 406 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 407. Seal**

The court clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court clerk," and the name of the Nation around the edge thereof, and the words "Official Seal" or the Nation's official emblem in its center. When acting as the clerk of the Supreme Court, the clerk's seal shall be circular in form and contain the words "Supreme Court clerk" and the name of the Nation around the edge thereof, and the words "Official Seal" or the Nation's official emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 405 to Section 407 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 408. Certification of True Copies**

(a) The court clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the court clerk's office, and in substantially the following form:

##### **CERTIFICATE OF TRUE COPY**

I hereby certify that the above and foregoing \_\_\_\_\_ is a true, accurate and exact copy of the original of same as it remains of record on file in my office.

(b) Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012, renumbered from Section 406 to Section 408 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 409. Courts Always Open**

The District and Supreme Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process, and of making and directing all interlocutory motions, orders, and rules.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 407 to Section 409 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 410. Trials and Hearings – Order in Chambers**

All trials upon the merits, except as specifically provided by law and in children's cases shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and in any place either within or without the Nation's jurisdiction; but no hearing, other than one ex parte, shall be conducted outside the Nation's jurisdiction without the consent of all parties affected thereby, except when determined by the court to be necessary or expedient in children's cases arising under the Indian Child Welfare Act of 1978, or when the Nation has entered into an agreement with another government for the sharing of judicial officers and courtroom space in which case the court may sit in any place authorized by such agreement.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 408 to Section 410 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 411. Clerk's Office and Orders by the Clerk**

The clerk's Office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the court may provide by rule or order that the clerk's Office shall be open for specified hours on Saturdays or particular tribal holidays and federal legal holidays including but not limited to the following: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's Office for issuing process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk, unless the Civil Procedure Act requires previous approval by the court, but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.



[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 409 to Section 411 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 412. Notice of Orders or Judgments**

Immediately upon the entry of an order to judgment, the clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 410 to Section 412 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 413. Books and Records Kept by the Clerk and Entries Therein**

(a) The clerk shall keep a book known as the “Civil Docket” of such form and style as may be prescribed by the justices of the Supreme Court, and shall enter therein each civil action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, order, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order of judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word “jury” on the folio assigned to that action. When in an action trial by judicial panel has been properly demanded or ordered, the clerk shall enter the words “judicial panel” on the folio assigned to that action.

(b) In like fashion, the clerk shall keep suitable dockets, indices, calendars, and judgments records for the criminal, juvenile, and small claims dockets of the District Court, and the appeals and original action docket of the Supreme Court. The appeals and original action dockets of the Supreme Court may be combined if the Supreme Court shall so direct.

(c) The clerk shall also keep such other books and records as may be required from time to time.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 411 to Section 413 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 414. Stenographic Report or Transcript as Evidence**

(a) Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

(b) Whenever the testimony of a witness at a trial or hearing which was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording thereof maintained in the custody of the court clerk with the records of the trial, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his direction a transcript of the recording.

(c) A tape recording or stenographically reported transcript may be ordered from the court clerk for a fee as established by the Supreme Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 412 to Section 414 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 415. Judgment Docket**

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, the date of its rendition, and the date on which said judgment is entered on said judgment docket. If the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 413 to Section 415 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 416. Execution Docket**

In the execution docket the clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The clerk shall also record in full the return of the Chief of the Lighthouse Police Department to each execution, and such record shall be evidence of such return, if the original be mislaid or lost.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 414 to Section 416 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 417. Clerk May Collect Judgment and Costs**

Where there is no execution outstanding, the clerk of the court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the Chief of the Lighthorse Police Department on an execution, and the clerk shall be liable to be penalized in the same manner and amount as the Chief of the Lighthorse Police Department for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 415 to Section 417 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 418. Clerks to Issue Writs and Orders**

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his attorney who is seeking the issuance of such writ, order, or process and shall be issued by the clerk. Except for summons and subpoena, the clerk shall not issue any such writ, order, or process except upon order or allowance of the court unless specific authorization for his issuing such document is found in the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 416 to Section 418 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 419. Clerk to File and Preserve Papers**

It is the duty of the clerk to file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 417 to Section 419 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 420. Each Case to be Kept Separate**

The papers in each case shall be kept in a separate file marked with the title and number of the case.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 418 to Section 420 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 421. Endorsements**

The clerk shall indorse upon every paper filed with him, the day of its filing; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 419 to Section 421 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 422. Entry on Return of Summons**

The clerk shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 420 to Section 422 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 423. Material for Record**

The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court, but if the items of an account, or the copies of papers attached to the pleadings, be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for the purpose of appeal.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 421 to Section 423 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 424. Memorializing Record**

It is the duty of the court to write out, sign, and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the court may direct counsel the court clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or the court may direct the clerk to prepare the written memorialization dictated by the court and sign and file the same on the court's behalf.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 422 to Section 424 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 425. Clerk to Keep Court Records, Books and Papers--Statistical and Other Information**

The clerk shall keep the records and books and papers appertaining to the court and record its proceedings, and exercise the powers and perform the duties imposed upon him by statute, court order, or court rule. The court clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Supreme Court and to the General Council, such statistical and

other information as the Supreme Court or the General Council may require, including, but without being limited to, the number and classification of cases:

- (a) Filed with the court.
- (b) Disposed of by the court, and the manner of such disposition.
- (c) The number of cases pending before the court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 423 to Section 425 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 426. Applicable to District and Supreme Court**

The provisions of this Chapter shall apply to the clerk of the District Court and the Supreme Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012 renumbered from Section 424 to Section 426 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 427. Bonds**

The court clerk and each deputy clerk shall be bonded by a position fidelity bond of no less than \$100,000 to guarantee the proper performance of their duties and their fidelity in the handling of the money and other property coming into their hands in the performance of their duties. The amount of such bond in excess of the \$100,000 shall be set by the General Council. The cost for obtaining bonds for the court clerk and deputy clerk shall be paid by the Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 425 to Section 427 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FIVE**

### **CHIEF OF THE LIGHTHORSE POLICE DEPARTMENT - PROCESS**

#### **Section 501. Style of Process**

The style of process shall be “The SEMINOLE NATION OF OKLAHOMA to:” and all process shall be under the seal of the court clerk and shall be signed by the court clerk, and dated the day it is issued.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 502. Appointment of Substitute for Lighthorse Police Department Chief**

The court or a judge thereof, or any clerk in the absence of the judge and upon his oral or written order, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the Chief of the Lighthorse Police Department has. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the Chief of the Lighthorse Police Department for similar services.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 503. Lighthorse Police Department Chief to Endorse Time of Receipt on Process**

The Chief of the Lighthorse Police Department shall endorse upon every summons, order of arrest, or for the delivery of property or of attachment or injunction, the day and hour it was received by him.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 504. Lighthorse Police Department Chief to Execute and Return Process**

The Chief of the Lighthorse Police Department shall execute every summons, order or other process to be served within the court's jurisdiction, and return the same as required by law, and if he fails to serve process, unless he makes it appear to the satisfaction of the court that he was prevented by inevitable accident from serving process, he shall be liable to the court in a sum not exceeding Five Hundred Dollars (\$500.00) upon motion and ten (10) days' notice, and shall be liable to the action of any person aggrieved by such failure. Provided that any party, his agent or attorney may make and file with the clerk of the court an affidavit, stating that he believes that the Chief of the Lighthorse Police Department will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced in court. In that case the clerk shall direct the original, or other process, in such suit to a private process server who shall be subject to the same penalties as the Chief of the Lighthorse Police Department if the private process server fails to serve process, unless he makes it appear that he was prevented by inevitable accident from serving process.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 505. When Bailiff or Lighthorse Police Department Chief May Adjourn Court**

If the judge fails to attend at the time and place appointed for holding his court, the Chief of the Lighthorse Police Department, other person appointed by the court as bailiff, or the court clerk, shall have power to adjourn the court, from day to day, until the regular or assigned judge attend or a special judge, or judge pro tempore, be selected.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 506. Other Duties of Lighthorse Police Department Chief--Disposition of Fees**

The Chief of the Lighthorse Police Department shall exercise the powers and duties conferred and imposed upon him by the Seminole Nation Code of Laws, court rule, and the common law. The Police Chief's fees allowed by the court for the service of process and mileage shall be paid into the general miscellaneous account of the Lighthorse Police Department and may be transferred to another line item upon order of the Chief of the Lighthorse Police Department or used for any allowable expense or cost of the Lighthorse Police Department other than the payment of salaries.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER SIX BONDS AND SURETIES**

### **Section 601. Justification of Surety**

In any situation where the Seminole Nation Code of Laws requires the pledging of security in connection with any action or undertaking, the person offered as surety, if not a qualified surety or bonding company, shall make an affidavit of his qualifications, which affidavit may be made before the court clerk, and shall be endorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the person making the undertaking shall be shown and attached thereto. The court clerk shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter. All posted bonds and sureties shall be filed with the court clerk's office, which shall serve as the central repository for all such matters.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 602. Qualifications of Surety**

The surety in every undertaking provided for by the Seminole Nation Code of Laws, unless a surety or bonding company authorized to give their bond or undertaking by tribal law, irrevocably submits himself to the jurisdiction of the Nation's courts for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed in this section. In all instances, a surety must be licensed either by the Nation, another Indian Tribe, or a state.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 603. Real Estate Mortgage as Bond**

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a state in which any portion of the Nation's jurisdiction lies shall be accepted, provided that the amount of such bond, guaranty, or indemnity shall not exceed fifty percent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty percent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty percent valuation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 604. Valuation of Real Estate**

The court clerk, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits as to the value of such real estate from two landowners or licensed real



estate appraisers or brokers versed in land values in the community where such real estate is located. The court clerk shall have the authority to administer the oaths and take said affidavits.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 605. False Valuation—Penalty**

Any person willfully making a false affidavit as to the value of any real estate offered as bond under this chapter shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured by such false affidavit to the extent of the injury proximately caused thereby.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 606. Action by Nation or Governmental Department—No Bond Required**

Whenever an action is filed in the court by the Nation, or by direction of any department of the Nation, its agencies, commissions, or political branches, no bond, including cost, replevin, attachment, garnishment, re-delivery, injunction bonds, appeal bonds, or other obligations of security shall be required from such governmental party either to prosecute said suit, answer, or appeal the same.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 607. Appearance Bond—Enforcement**

(a) If a bench warrant or command to enforce a court order by body attachment is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the court clerk upon order of the court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Nation as the court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligations adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court Fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Nation may enforce the penalty on a forfeited bail bond.

(b) Upon forfeiture of a bond payable to the Nation as ordered by the court, including bail bonds, the Nation may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the Court Fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER SEVEN MISCELLANEOUS**

### **Section 701. Deputy May Perform Official Duties**

Any duty enjoined by the Seminole Nation Code of Laws upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy unless otherwise specifically stated.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 801 to Section 701 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 702. Affirmation**

Whenever an oath is required by the Seminole Nation Code of Laws, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 802 to Section 702 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 703. Publication Notice**

(a) All publications and notices required or permitted to be published by the Seminole Nation Code of Laws shall be published in the Cokv Tvlvme and at least one additional newspaper of general circulation within or adjacent to the Nation's jurisdiction.

(b) Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the Nation's jurisdiction lies, or within or adjacent to the Nation's jurisdiction, and the Nation's Newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Seminole Nation Code of Laws.

(c) For purposes of this section, a newspaper shall be deemed to be "published" within or adjacent to the Nation's jurisdiction if such newspaper maintains a local office and is intended for general distribution within the county. The fact that all or a portion of the paper may be printed outside the county shall not be determinative.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 803 to Section 703 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 704. Action on Official Bond**

When an officer, executor, or administrator within the jurisdiction of the Nation by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law entitled to the benefit of the security, may bring an action thereon in his own

name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which he may be entitled by reason of delinquency.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 804 to Section 704 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 705. Several Actions on Same Security**

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 805 to Section 705 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 706. Immaterial Errors to be Disregarded**

The court, in every stage of action, must disregard any error or defect in the pleadings, or proceedings which do not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 806 to Section 706 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 707. Payments Into Court for Minors and Incompetents**

Where any amount of money not exceeding Five Hundred Dollars (\$500.00) shall be deposited and paid into court by virtue of any judgment, order, settlement, distribution, or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the court that such money is needed for the support of such minor or incompetent or that it is otherwise for the best interest of such minor or incompetent person, the court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trust for such minor or incompetent person, with bond, as the court may direct, to be expended for the support, use, and benefit of such minor or incompetent person. Such order may be made by the court in the original cause in which the funds are credited upon the application of any interested person; and the court may direct the clerk of the court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the court with bond, the court shall order the money paid to the guardian for the use of the minor or incompetent person subject to such restrictions and accountings as the court may direct.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 807 to Section 707 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 708. Conserving Moneys Obtained for Minors or Incompetent Persons**

Moneys recovered in any court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall, by order of the court, be deposited in a banking or savings and loan institution, approved by the court. Such fund shall be managed by the court or other tribal agency approved by the court. Until the person becomes eighteen (18) years of age, or competent to again handle his affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person, subject to such restrictions and accounting as the court shall direct.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 808 to Section 708 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 709. Sharing of Judicial Officers**

Notwithstanding any other provision of this Title, the General Council retains authority to negotiate an agreement with the Bureau of Indian Affairs or other Indian Nations for the shared use of magistrates, trial judges, and appellate court justices. In addition to any other necessary or convenient provisions, such agreements may determine the method of selection and retention of shared judicial officers, their compensation, and required duties. When acting on behalf of the Nation, such magistrates, judges or justices shall have all the powers and authority vested in a magistrate, judge or justice of the Nation. Such judicial officers may be in addition to, in lieu of, or the same as, those magistrates, judges or justices authorized by this Title.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 809 to Section 709 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 710. Sharing of Other Judicial Personnel**

Notwithstanding any other provision of this Title, the General Council retains authority to negotiate an agreement with the Bureau of Indian Affairs or other Indian Nations for the shared use of court clerks, attorneys general, bailiffs, court reporters, and other judicial related or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and required duties. When acting on behalf of the District and Supreme Court, such personnel shall

have all the powers and authority of the equivalent position in the Seminole Nation Code of Laws. Such personnel may be the same as, in addition to, or in lieu of, personnel employed by the Nation in these positions.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 810 to Section 710 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 711. Sharing of Material Resources**

Notwithstanding any other provision of law, the Principal Chief or General Council retains authority, as appropriate under the laws of the Seminole Nation, to negotiate an agreement with the Bureau of Indian Affairs, other Indian Nations, or any other unit of government for the shared use of facilities, including courtroom, offices, and jail space, equipment, and supplies necessary for the operation of the court and law enforcement agencies of the Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 811 to Section 711 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 712. Sharing of Financial Resources**

Provision may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided that, the salaries of the magistrates, judges, justices, and Attorney General shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Nations or agencies to the funding of the court and provide a formula therefore, and may designate any particular grant money for the use of the court, or may designate the court as a prime contractor, grantee, or similar designation to authorize the court to apply directly to any funding source for any grant or contract funds available for the operation of the court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 812 to Section 712 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 713. Copies of Laws**

(a) The Supreme Court law library shall be provided with copies of the Code, as well as all Federal and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the Nation's jurisdiction.

(b) Whenever the court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Attorney General to furnish an opinion on the point in question.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 813 to Section 713 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 714. Cooperation by Federal Employees**

(a) No field employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the courts of the Nation, or influence, or attempt to influence, interfere with, obstruct, or control such functions in any manner except in response to a request for advice or information from the court.

(b) Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the court upon its request in the preparation and presentation of the facts in the case, and in the proper treatment of offenders and juveniles.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 814 to Section 714 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 715. Effect of Prior Decisions of the Court**

The prior decisions of the courts acting for the Nation shall be binding upon the parties thereto. The rules of law stated in such decisions, not inconsistent with statutes enacted by the General Council after such decisions, shall be precedent in the courts, subject to modification or being overruled by subsequent opinion of the Court as in other cases.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 815 to Section 715 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 716. Judicial Review of Legislative and Executive Actions**

The District and Supreme Court shall have the authority to review any act by the General Council, or any officer, agent, or employee of the Nation to determine whether that action, and the procedure or manner of taking that action, is constitutional under the Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds such action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize an unlawful action or refuse to apply the law or statute in question. If the Court finds that the contemplated action is authorized by the Nation's Constitution and statutes enacted thereto, or the common law, and that the manner in which the authorized action is to be exercised is not prohibited by the Constitution of the Seminole Nation, statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of an officer, agency, agent, or employee of the Nation under law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision or action.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 816 to Section 716 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 717. Travel**

Requests for out-of-state travel by officials of the Supreme Court must be made in writing and approved by the Chief Justice. Requests for out-of-state travel by officials of the District Court must be made in writing and approved by the District Judge. The District Court clerk shall be responsible for the court system's accounting and shall be responsible for the preparation of all justice, judge, and court employee travel documentation, thus ensuring all federal government and Seminole Nation travel regulations in effect are complied with and followed. All out-of-state travel claims shall be approved by the Chief Justice or Chief District Judge before final payment is made.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-09, October 17, 2015.]

**Section 718. Action When No Procedure Provided**

Whenever no specific procedure is provided in the Seminole Nation Code of Laws, the court may proceed in any lawful fashion.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; renumbered from Section 817 to Section 718 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



**TITLE 6**  
**CRIMINAL OFFENSES AND TRAFFIC OFFENSES**  
**INDEX**

<b>TITLE 6 CRIMINAL OFFENSES AND TRAFFIC OFFENSES INDEX .....</b>	<b>i</b>
<b>TITLE 6 CRIMINAL OFFENSES AND TRAFFIC OFFENSES.....</b>	<b>1</b>
<b>CHAPTER ONE CRIMINAL OFFENSES .....</b>	<b>1</b>
Section 101. Definitions .....	1
Section 102. General Criminal Jurisdiction .....	2
Section 103. Statute of Limitations .....	3
Section 104. Assault, Battery, or Assault and Battery with Dangerous Weapon.....	3
Section 105. Domestic Abuse .....	4
Section 106. Recklessly Endangering Another Person.....	6
Section 107. Terroristic Threats .....	6
Section 108. Unlawful Restraint .....	6
Section 109. False Imprisonment .....	7
Section 110. Interference with Custody.....	7
Section 111. Criminal Coercion .....	7
Section 112. Sexual Assault.....	8
Section 113. Indecent Exposure .....	9
Section 114. Reckless Burning or Exploding .....	9
Section 115. Criminal Mischief .....	9
Section 116. Criminal Trespass.....	10
Section 117. Theft .....	10
Section 118. Receiving Stolen Property .....	10
Section 119. Embezzlement.....	11
Section 120. Fraud.....	11
Section 121. Forgery.....	11
Section 122. Extortion .....	12
Section 123. Misbranding .....	12
Section 124. Unauthorized Use of Automobiles and Other Vehicles .....	12
Section 125. Tampering with Records.....	12
Section 126. Bad Checks .....	12
Section 127. Unauthorized Use of Credit Cards .....	13
Section 128. Defrauding Secured Creditors.....	14

Section 129.	Neglect of Children .....	14
Section 130.	Persistent Non-Support.....	14
Section 131.	Bribery .....	15
Section 132.	Threats and Other Improper Influence in Official and Political Matters.....	15
Section 133.	Retaliation for Past Official Action.....	16
Section 134.	Perjury .....	16
Section 135.	False Alarms .....	17
Section 136.	False Reports.....	17
Section 137.	Impersonating a Public Servant .....	17
Section 138.	Disobedience to Lawful Order of Court.....	17
Section 139.	Resisting Arrest.....	18
Section 140.	Obstructing Justice .....	18
Section 141.	Escape.....	18
Section 142.	Bail Jumping .....	18
Section 143.	Flight to Avoid Prosecution or Judicial Process .....	19
Section 144.	Witness Tampering .....	19
Section 145.	Tampering With or Fabricating Physical Evidence .....	19
Section 146.	Disorderly Conduct .....	20
Section 147.	Riot; Failure to Disperse.....	20
Section 148.	Harassment.....	21
Section 149.	Carrying Concealed Weapons.....	21
Section 150.	Cruelty to Animals .....	21
Section 151.	Maintaining a Public Nuisance .....	22
Section 152.	Abuse of Office .....	22
Section 153.	Violation of An Approved Tribal Ordinance.....	22
Section 154.	Abuse Of Psychotoxic Chemical Solvents .....	22
Section 155.	Aiding, Assisting or Abetting the Commission of Offense Prohibited .....	23
Section 156.	Compliance with Order of Officer Required; Obstruction of Duty Prohibited.....	23
Section 157.	Fictitious or False Information Prohibited.....	24
Section 158.	Stalking .....	24
Section 159.	Violating Protective Order.....	24
Section 160.	Child Abuse, Exploitation and Neglect .....	25
Section 161.	Crimes By Caretakers.....	25
Section 162.	Computer and Electronic Crimes .....	26

Section 163.	Desertion of Wife or Child under 15 .....	27
Section 164.	Maximum Fines and Sentences of Imprisonment .....	27
Section 165.	Intoxication .....	28
Section 166.	Shoplifting .....	28
Section 167.	Gasoline Pump Thievery .....	29
Section 168.	Burglary .....	29
Section 169.	Intoxicating Beverage Purchase by Person Under 21 Years of Age Prohibited.....	29
Section 170.	Furnishing Intoxicating Beverages to a Minor.....	30
Section 171.	Tobacco Purchase by Person Under 18 Years of Age Prohibited .....	30
Section 172.	Furnishing Tobacco Products to a Minor .....	31
Section 173.	Possession of Intoxicating Beverages in Public .....	31
Section 174.	Criminal Offenses of the State of Oklahoma Adopted to Extent Not Inconsistent with Nation's Laws .....	31
<b>CHAPTER TWO TRAFFIC OFFENSES.....</b>		<b>32</b>
Section 201.	Definitions .....	32
Section 202.	Driver's License in Possession.....	32
Section 203.	Driving in Violation of License Restriction.....	32
Section 204.	Driving While License is Suspended or Revoked.....	32
Section 205.	Permitting Unauthorized Person to Drive.....	33
Section 206.	Careless Driving.....	33
Section 207.	Reckless Driving .....	33
Section 208.	Transporting an Open Container of Alcohol.....	34
Section 209.	Driving While Intoxicated .....	34
Section 210.	Duties of Drivers Involved in Accidents Involving Deaths or Personal Injuries .....	35
Section 211.	Duty Upon Striking Unattended Vehicle .....	35
Section 212.	Duty Upon Striking Highway Fixtures .....	35
Section 213.	When Driver Unable To Report .....	36
Section 214.	Failure to Signal .....	36
Section 215.	Failure to Obey Officer .....	36
Section 216.	Following Too Closely .....	37
Section 217.	Stopping for School Bus .....	37
Section 218.	Entering Public Road from Private Road.....	37
Section 219.	Right of Way at Intersection .....	37

Section 220.	Failure to Stop at Stop Sign and Yielding Right of Way.....	38
Section 221.	Driving on Right Side.....	38
Section 222.	Passing Oncoming Vehicles .....	38
Section 223.	Passing and Turning On Curve or Crest .....	39
Section 224.	Unsafe Motor Vehicles – Other Than Motorcycles .....	39
Section 225.	Unsafe Motorcycles.....	40
Section 226.	Required Safety Equipment for Motorcycles .....	41
Section 227.	Required Passenger Restraints .....	41
Section 228.	Required Child Safety Seats .....	42
Section 229.	Speed Limits .....	43
Section 230.	When Lights Are Required To Be On.....	44
Section 231.	Pedestrians .....	44
Section 232.	Discarding Litter on Roads and Roadways.....	45
Section 233.	Depositing, Dumping or Throwing Destructive Material on Public Property .....	45
Section 234.	Depositing, Dumping or Throwing Lighted, Flaming or Glowing Substance on Public Property .....	45
Section 235.	Illegal Parking .....	46
Section 236.	Failure to Stop when Directed by Police or when Approached by Emergency Vehicle .....	46
<b>CHAPTER THREE BANISHMENT AND EXCLUSION .....</b>		<b>48</b>
Section 301.	Purpose .....	48
Section 302.	Definitions .....	48
Section 303.	Persons Subject to Banishment .....	48
Section 304.	Persons Subject to Exclusion .....	48
Section 305.	Grounds for Banishment.....	48
Section 306.	Grounds for Exclusion.....	49
Section 307.	Entry of Order of Banishment or Exclusion .....	50
Section 308.	Effect of Banishment or Exclusion .....	50
Section 309.	Dissemination of Orders of Banishment or Exclusion .....	51
Section 310.	Emergency Exclusion .....	51
Section 311.	Enforcement of Orders .....	51

## TITLE 6 CRIMINAL OFFENSES AND TRAFFIC OFFENSES

### CHAPTER ONE CRIMINAL OFFENSES

#### **Section 101. Definitions**

(a) “Accused.” A person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.

(b) “Appellate proceeding.” A contested oral argument that is held before the Seminole Nation Court of Appeals.

(c) “Arrest.” The actual custodial restraint of a person or the person’s submission to custody.

(d) “Bodily injury.” The impairment of physical condition and includes but shall not be limited to any skin bruising, bleeding, failure to thrive, malnutrition, burns, fracture and/or break, subdural hematoma, soft tissue swelling, injury to any internal organ and/or physical condition which imperils a person’s health or welfare.

(e) “Criminal offense.” Conduct that gives a peace officer or prosecutor probable cause to believe that a crime involving physical injury or the threat of physical injury, a sexual offense, or a crime against property has occurred.

(f) “Criminal proceeding.” Any hearing, argument or other matter that is scheduled by and held before the Seminole Nation District Court but does not include any deposition, lineup, proceeding or other matter that is not held in the presence of the Court.

(g) “Defendant.” A person or entity that is formally charged by complaint, indictment or information with committing a criminal offense.

(h) “Knowingly” or “with the knowledge.” A person acts knowingly with respect to a material element of an offense when:

- (1) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of the nature or that such circumstances exist; and
- (2) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(i) “Indian” means a person who is a member of an Indian tribe, band, nation or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act,

which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(j) “Indian Country” means the territorial jurisdiction of the Seminole Nation as defined in Article XXI, Section 2 of the Seminole Nation Constitution.

(k) “Negligently.” A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct.

(l) “Purposely” or “with the purpose.” A person acts purposely with respect to a material element of an offense when:

- (1) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
- (2) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(m) “Recklessly.” A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and justifiable risk that the material element exists or will result from his conduct.

(n) “Serious bodily injury.” Physical injury which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; renumbered from section 100 to section 101 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 102. General Criminal Jurisdiction**

The Seminole Nation District Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the same within the boundaries of the Seminole Nation’s Indian country. In the cases where the person in violation of this Code is not an Indian and is not covered by the Special Domestic Violence Criminal Jurisdiction provided in Title 6A, the Seminole Nation District Court’s exercise of power shall be civil rather than criminal and punishment subject only to the applicable fine. The Seminole Nation District Court is also vested with the power to impose protection orders against non- Indians in accordance with the provisions of this Code.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015; effective July 6, 2015; renumbered from section 101 to section 102 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Statute of Limitations**

No criminal prosecution shall be maintained under this Chapter unless the action shall have been commenced within one year after the commission of the offense. The one-year time limit does not include time spent outside the jurisdiction of the Seminole Nation District Court for the purpose of avoiding prosecution. The burden of proving reasonable absence from jurisdiction shall be upon the accused.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015; effective July 6, 2015; renumbered from section 102 to section 103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 104. Assault, Battery, or Assault and Battery with Dangerous Weapon**

- (a) Assault.
  - (1) A person is guilty of assault if he or she:
    - (A) Attempts to cause bodily injury to another; or
    - (B) Attempts by physical menace to put another in fear of imminent serious bodily injury.
  - (2) Assault shall be a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.
- (b) Battery.
  - (1) A person is guilty of battery if he or she:
    - (A) Purposely, knowingly or recklessly causes bodily harm;
    - (B) Negligently causes bodily injury to another with a deadly weapon.
  - (2) Battery shall be a misdemeanor.
- (c) Assault and Battery with a Dangerous Weapon.
  - (1) A person is guilty of assault, battery, or assault and battery with a dangerous weapon if he or she, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon the person of another with any sharp or dangerous weapon, or, without such cause, shoots at another with any kind of firearm, air gun, conductive energy weapon or other means whatever, with intent to injure any person, although without the intent to kill such person or to commit any crime punishable by banishment.

- (2) Assault and battery with dangerous weapon upon is a Class I Felony, and/or punishable by banishment for a period not exceeding five (5) years, or a combination of imprisonment, fines and banishment.
- (d) Aggravated Assault and Battery.
  - (1) A person is guilty of aggravated assault and battery under any of the following circumstances:
    - (A) When serious bodily injury is inflicted upon the person assaulted; or
    - (B) When committed by a person of robust health or strength upon one who is aged, decrepit, or incapacitated.
    - (C) When committed for a second or more time against the same person within a 10-year period.
  - (2) Aggravated assault and battery shall be a Class II Felony, and/or punishable by banishment for a period not less than one (1) year nor exceeding ten (10) years, or a combination of imprisonment, fines and banishment.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; renumbered from section 103 to section 104 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 105. Domestic Abuse**

- (a) A person shall be guilty of domestic abuse if he or she:
  - (1) commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant.
- (b) Domestic abuse shall also include purposely or knowingly causing reasonable apprehension of bodily injury in a family member or household member, whether or not an assault and battery has actually occurred.
- (c) Regardless of any other source of jurisdiction, the Seminole Nation may exercise jurisdiction over a non-Indian defendant, pursuant to the federal domestic violence criminal statute, 25 U.S.C. § 1304, if the defendant:



- (1) Resides within the jurisdiction of the Nation; or
- (2) Is employed within the jurisdictional area of the Nation; or
- (3) Is a spouse, intimate partner, or dating partner of:
  - (A) A member of the Nation; or
  - (B) A member of another Indian tribe who resides within the jurisdiction of the Nation.

(d) Domestic abuse based upon a conviction for assault shall be a Class III Misdemeanor. Domestic abuse involving verbal or written assault, or a battery shall be a Class I Felony. A conviction for a second or subsequent offense shall be a Class II Felony, or punishable by banishment for a period not exceeding Three (3) years, or a combination of imprisonment, fines and banishment.

- (1) Any prior conviction for assault or battery against a protected person as defined by the Nation's Domestic Violence Code, shall constitute a sufficient basis for a banishable criminal charge regardless of whether that conviction was rendered in the Seminole Nation or in another tribal, state or federal court.

(e) Domestic abuse committed against a pregnant woman with knowledge of the pregnancy by the person so convicted shall be a Class II Felony, punishable by imprisonment in jail for not less than forty-five (45) days, or by banishment for a period not less than six (6) months nor exceeding five (5) years, or a combination of imprisonment, fines and banishment.

- (1) A second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be a Class II Felony, punishable by imprisonment for not less than six (6) months, and banishment for a period not less than one (1) year nor exceeding ten (10) years, or a combination of imprisonment, fines and banishment.
- (2) Domestic abuse committed against a pregnant woman with knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a Class II Felony, punishable by imprisonment for not less than six months (6) months, and banishment for not less than five (5) years and not more than life, or a combination of imprisonment, fines and banishment.

(f) Any person convicted of domestic abuse that results in serious bodily injury to the victim shall be guilty of aggravated domestic abuse and be a Class II Felony and subject to banishment of not less than three (3) months nor exceeding three (3) years, or a combination of imprisonment, fines and banishment.

(g) Any person convicted of domestic abuse that was committed in the presence of a child shall have a mandatory imprisonment in jail for not less than thirty (30) days. "In the

presence of a child” means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of this section, “child” may be any child whether or not related to the victim or the defendant.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015; effective July 6, 2015; renumbered from section 104 to section 105 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 106. Recklessly Endangering Another Person**

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another person, whether or not the actor believed the firearm to be loaded.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 105 to section 106 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 107. Terroristic Threats**

A person is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 106 to section 107 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 108. Unlawful Restraint**

A person commits a misdemeanor if he or she knowingly:

- (a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or
- (b) Holds another in a condition of involuntary servitude.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 107 to section 108 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 109. False Imprisonment**

A person commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 108 to section 109 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 110. Interference with Custody**

(a) Custody of children. A person commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) Custody of committed person. A person is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she does not have the privilege to do so.

(c) Committed person. Committed person means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 109 to section 110 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 111. Criminal Coercion**

(a) A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's freedom of action to his or her detriment, he or she threatens to:

- (1) Commit any criminal offense; or
- (2) Accuse anyone of a criminal offense; or
- (3) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 110 to section 111 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 112. Sexual Assault**

(a) A person who has sexual contact with another person or causes such other person to have sexual contact with him or her, is guilty of sexual assault as a misdemeanor, if:

- (1) He or she knows that the conduct is offensive to the other person; or
- (2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature or his or her conduct; or
- (3) He or she knows that the other person is unaware that a sexual act is being committed; or
- (4) The other person is less than 10 years old; or
- (5) He or she is in a position of influence, authority, or power over the person and misuses such position to intimidate or otherwise take advantage of the person; or
- (6) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or
- (7) The other person is less than 16 years old and the actor is at least four years older than the other person and such individuals are not legally married; or
- (8) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or
- (9) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 111 to section 112 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 113. Indecent Exposure**

A person commits a misdemeanor if he or she exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 112 to section 113 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 114. Reckless Burning or Exploding**

A person commits a misdemeanor if he or she purposely starts a fire or causes an explosion, whether on his or her property or another's, and thereby recklessly:

- (a) Places another person in danger of death or bodily injury; or
- (b) Places a building or occupied structure of another in danger of damage or destruction.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 113 to section 114 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 115. Criminal Mischief**

- (a) A person is guilty of criminal mischief if he or she:
  - (1) Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or
  - (2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or
  - (3) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.
- (b) Criminal mischief is a misdemeanor if the actor purposely causes pecuniary loss in excess of \$100, or a petty misdemeanor if he or she purposely or recklessly causes pecuniary loss in excess of \$25. Otherwise, criminal mischief is a violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 114 to section 115 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 116. Criminal Trespass**

(a) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

- (1) Actual communication to the actor; or
- (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) Fencing or other enclosure manifestly designed to exclude intruders.

(c) An offense under this section constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 115 to section 1116 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 117. Theft**

A person who, without permission of the owner, shall take, shoplift, possess or exercise unlawful control over movable property not his or her own or under his or her control with the purpose to deprive the owner thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or herself or another not entitled thereto shall be guilty of theft, a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 116 to section 117 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 118. Receiving Stolen Property**

A person is guilty of receiving stolen property, a misdemeanor, if he or she purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 117 to section 118 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 119. Embezzlement**

A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, shall be guilty of embezzlement, a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 118 to section 119 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 120. Fraud**

A person who shall, by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures, obtain any money or other property shall be guilty of fraud, a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 119 to section 120 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 121. Forgery**

(a) A person is guilty of forgery, a misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he or she is facilitating fraud or injury to be perpetrated by anyone, he or she:

- (1) Alters, makes, completes, authenticates, issues or transfers any writing of another without his or her authority; or
- (2) Utters any writing which he or she knows to be forged in a manner above specified.

(b) “Writing” includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 120 to section 121 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 122. Extortion**

A person who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be guilty of extortion, a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 121 to section 122 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 123. Misbranding**

A person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person shall be guilty of a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 122 to section 123 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 124. Unauthorized Use of Automobiles and Other Vehicles**

A person commits a misdemeanor if he or she operates another person's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he or she known of it.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 123 to section 124 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 125. Tampering with Records**

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 124 to section 125 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 126. Bad Checks**

(a) A person who issues or passes a check, debit card, or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor.



(b) For the purposes of this section, an issuer is presumed to know that the check, or debit card, or other instrument would not be paid, if:

- (1) The issuer had no account with the drawee at the time the check or order was issued; or
- (2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

(c) Referral of a bogus check or debit card complaint for bogus check restitution shall be at the discretion of the prosecuting attorney and must be approved by the Court. This referral shall not limit the power to prosecute bogus check or debit card complaints. Bogus check restitution shall provide the Court the ability and flexibility in establishing repayment and restitution plans in order to make the victim and Seminole Nation whole.

- (1) Upon receipt of a bogus check or debit card complaint, the prosecuting attorney shall determine if the complaint is one which is appropriate to be referred to bogus check restitution.
- (2) In determining whether to refer a case to bogus check restitution, the prosecuting attorney may consider any of the following guidelines:
  - (A) The amount of the bogus check;
  - (B) If there is a prior criminal record of the defendant;
  - (C) The number of bogus check complaints against the defendant previously prosecuted in any jurisdiction;
  - (D) Whether or not there are other bogus check complaints currently pending against the defendant; and
  - (E) The strength of the evidence of intent to defraud the victim.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 125 to section 126 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 127. Unauthorized Use of Credit Cards**

(a) A person commits a misdemeanor if he or she uses a credit card or debit card for the purpose of obtaining property or services with knowledge that:

- (1) The card is stolen or forged; or
- (2) The card has been revoked or cancelled; or

(3) For any other reason his or her use of the card is unauthorized by the issuer.

(b) Credit card and debit card shall mean and be considered a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 126 to section 127 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 128. Defrauding Secured Creditors**

(a) A person commits a misdemeanor if he or she destroys, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder that interest.

(b) This crime may be prosecuted at the discretion of the Attorney General of the Seminole Nation based on the provisions contained in the Commercial Code of Title 29 of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 127 to section 128 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 129. Neglect of Children**

(a) A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he or she knowingly endangers the child's welfare by violating a duty of care, protection or support.

(b) A parent, guardian, or other person supervising the welfare of a child under 18 commits a violation if he or she neglects or refuses to send the child to school.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 128 to section 129 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 130. Persistent Non-Support**

A person commits a misdemeanor if he or she persistently fails to provide support which he or she can provide and which he or she knows he or she is legally obliged to provide to a spouse, child or other dependent.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 129 to section 130 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 131. Bribery**

(a) A person is guilty of bribery, a misdemeanor, if he or she offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

- (1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
- (2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
- (3) Any benefit as consideration for a violation of a known legal duty as a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 130 to section 131 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 132. Threats and Other Improper Influence in Official and Political Matters**

(a) A person commits a misdemeanor if he or she:

- (1) Threatens unlawful harm to any person with purpose to influence his or her decision, vote or other exercise of discretion as a public servant, party official or voter; or
- (2) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or
- (3) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

(c) This Section of the Criminal Code shall not apply to acts or actions which take place between elected officials or representatives of the Nation during the conduct of an official meeting of the General Council and transpire on the Council floor between individuals who are elected officials or representatives of the Nation, provided that such actions shall be dealt with pursuant to Title 16 and such other rules established by the General Council. If the act or actions take place outside of the Council floor, before or after the meeting, then any persons involved may be prosecuted according to this Section.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 131 to section 132 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 133. Retaliation for Past Official Action**

A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 132 to section 133 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 134. Perjury**

(a) A person is guilty of perjury, a misdemeanor, if in any official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(b) No person shall be guilty of an offense under this Section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(c) No person shall be convicted of an offense under this Section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 133 to section 134 and subsections renumbered on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 135. False Alarms**

A person who knowingly causes a false alarm of fire or other emergency to be transmitted to, or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 134 to section 135 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 136. False Reports**

(a) A person, who knowingly gives false information to any law enforcement officer with the purpose to implicate another, commits a misdemeanor.

(b) A person commits a petty misdemeanor if he or she:

- (1) Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or
- (2) Pretends to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 135 to section 136 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 137. Impersonating a Public Servant**

A person commits a misdemeanor if he or she falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 136 to section 137 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 138. Disobedience to Lawful Order of Court**

A person who willfully disobeys any order, subpoena, summons, warrant or command duly issued, made or given by any Court of the Nation or of Indian Offenses or any officer thereof is guilty of a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 137 to section 138 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 139. Resisting Arrest**

A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, he or she creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 138 to section 139 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 140. Obstructing Justice**

A person commits a misdemeanor if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, he or she harbors or conceals the other, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 139 to section 140 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 141. Escape**

A person is guilty of the offense of escape, a misdemeanor, if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 140 to section 141 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 142. Bail Jumping**

A person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time or place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section

141 to section 142 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 143. Elight to Avoid Prosecution or Judicial Process**

A person who shall absent himself or herself from the Indian country over which the Nation Court or Court of Indian Offenses exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 142 to section 143 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 144. Witness Tampering**

(a) A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

- (1) Testify or inform falsely; or
- (2) Withhold any testimony, information, document or thing; or
- (3) Elude legal process summoning him or her to supply evidence; or
- (4) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(b) A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 143 to section 144 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 145. Tampering With or Fabricating Physical Evidence**

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or is about to be instituted, he or she:

(a) Alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) Makes, presents or uses any record, document or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 144 to section 145 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 146. Disorderly Conduct**

(a) A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he or she:

- (1) Engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or
- (3) Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(b) “Public” means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the actor’s purpose is to cause substantial harm or serious inconvenience, or if he or she persists in disorderly conduct after reasonable warning or request to desist. Otherwise, disorderly conduct is a violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 145 to section 146 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 147. Riot; Failure to Disperse**

(a) A person is guilty of riot, a misdemeanor, if he or she participates with two or more others in a course of disorderly conduct:

- (1) With purpose to commit or facilitate the commission of a felony or misdemeanor; or
- (2) With purpose to prevent or coerce official action; or
- (3) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, a law enforcement officer may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.



[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 146 to section 147 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 148. Harassment**

A person commits a petty misdemeanor if, with purpose to harass another, he or she:

- (a) Makes a telephone call without purpose or legitimate communication; or
- (b) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or
- (c) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
- (d) Subjects another to an offensive touching; or
- (e) Engages in any other course of alarming conduct serving no legitimate purpose.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 147 to section 148 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 149. Carrying Concealed Weapons**

A person who goes about in public places armed with a dangerous weapon concealed upon his or her person is guilty of a misdemeanor unless he or she has a permit to do so issued by the Nation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 148 to section 149 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 150. Cruelty to Animals**

A person commits a misdemeanor if he or she purposely or recklessly:

- (a) Subjects any animal in his or her custody to cruel neglect; or
- (b) Subjects any animal to cruel mistreatment; or
- (c) Kills or injures any animal belonging to another without legal privilege or consent of the owner; or
- (d) Causes one animal to fight with another.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 149 to section 150 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 151. Maintaining a Public Nuisance**

A person who permits his or her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his or her neighbors is guilty of a violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 150 to section 151 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 152. Abuse of Office**

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his or her conduct is illegal, he or she:

- (a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
- (b) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 151 to section 152 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 153. Violation of An Approved Tribal Ordinance**

A person who violates the terms of any statute or ordinance duly enacted by the General Council of the Seminole Nation of Oklahoma is guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 152 to section 153 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 154. Abuse Of Psychotoxic Chemical Solvents**

- (a) It shall be unlawful to purposely smell or inhale the fumes of any psychotoxic chemical solvent, or to possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent with the intention of causing a condition of intoxication, inebriation,

excitement, stupefaction, or the dulling of the brain or nervous system; or to sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute any psychotoxic chemical solvent knowing or believing that the purchaser or another intends to use the solvent in violation of this Section.

(b) This Section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(c) As used in this Section, “psychotoxic chemical solvent” includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement of listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substances without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

(d) Abuse of psychotoxic chemical solvents shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment not to exceed six months, or both, and the Court may order any person using psychotoxic chemical solvents for inhalation to be committed to some facility for treatment for a term not exceeding six months.

(e) Such psychotoxic chemical solvents kept or used in violation of this Section are hereby declared to be contraband and civil proceedings may be had against such psychotoxic chemical solvents as provided by law.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 153 to section 154 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 155. Aiding, Assisting or Abetting the Commission of Offense Prohibited**

It shall be unlawful for a person to aid, abet, or assist in the violation of this Code. A person found guilty under this Section shall be subject to the punishment associated with the offense which the person aids, abets or assists.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 154 to section 155 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 156. Compliance with Order of Officer Required; Obstruction of Duty Prohibited**

(a) It shall be a misdemeanor for a person to knowingly fail or refuse to comply with an order or direction of a police officer that is given by a visible or audible signal.

(b) It shall be a misdemeanor for a person to knowingly obstruct, prevent, or interfere with a police officer engaged in the discharge of the officer's official duty.

(c) It is an affirmative defense to a prosecution for a violation of this Section that the police officer's order or direction, or duty being performed is unlawful.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 155 to section 156 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 157. Fictitious or False Information Prohibited**

(a) It shall be a misdemeanor for a person who is under arrest and in the custody of an officer to:

- (1) fail to give the officer the person's actual name and address; or
- (2) give the officer an alias, assumed or fictitious name, or a false address.

(b) It shall be a misdemeanor for a person who makes a written promise to appear, or is given written notice by the officer to appear before the District Court to answer for an offense to give the officer an assumed or fictitious name or a false address.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 156 to section 157 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 158. Stalking**

(a) A person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking.

(b) The crime of stalking is a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 157 to section 158 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 159. Violating Protective Order**

(a) A person who has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order shall be guilty of a violation. Subsequent violations shall be punished as misdemeanors.

(b) Any violation of an ex parte or final protective order which results in physical injury to any person named in the protective order shall be punished as a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 158 to section 159 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 160. Child Abuse, Exploitation and Neglect**

(a) Any parent or other person who shall willfully or maliciously engage in child abuse, or who shall enable such abuse, shall be guilty of a misdemeanor. As used in this subsection, “child abuse” means the willful or malicious abuse of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

(b) Any parent or other person who shall willfully or maliciously engage in child neglect, or who shall enable such neglect, shall be guilty of a misdemeanor. As used in this subsection, “child neglect” means the willful or malicious neglect of a child under eighteen (18) years of age by another.

(c) Any parent or other person who shall willfully or maliciously engage in child sexual abuse, or who shall enable such sexual abuse, shall be guilty of a misdemeanor. As used in this section, “child sexual abuse” means the willful or malicious sexual abuse of a child under eighteen (18) years of age by another.

(d) Any parent or other person who shall willfully or maliciously engage in child sexual exploitation, or who shall enable such exploitation, shall be guilty of a misdemeanor. As used in this subsection, “child sexual exploitation” means the willful or malicious sexual exploitation of a child under eighteen (18) years of age by another.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 159 to section 160 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 161. Crimes By Caretakers**

(a) No caretaker shall verbally abuse any person entrusted to the care of the caretaker, or knowingly cause, secure, or permit an act of verbal abuse to be done. Any person convicted of violating the provisions of this Section shall be guilty of a misdemeanor. For the purpose of this section, “verbal abuse” means the repeated use of words, sounds, or other forms of communication by a caretaker, including but not limited to, language, gestures, actions or behaviors, that are calculated to humiliate or intimidate or cause fear, embarrassment, shame, or degradation to the person entrusted to the care of the caretaker.

(b) No caretaker or other person shall abuse, commit financial neglect, neglect, commit sexual abuse, or exploit any person entrusted to the care of such caretaker or other

person in a nursing facility or other setting, or knowingly cause, secure, or permit any of these acts to be done. Violations of this Section shall be punished as misdemeanors.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 160 to section 161 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 162. Computer and Electronic Crimes**

(a) It shall be unlawful to:

- (1) Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;
- (2) Use a computer, computer system, computer network, cell phone or any other property or electronic device for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, services or other thing of value by means of a false or fraudulent pretense or representation;
- (3) Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;
- (4) Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;
- (5) Willfully and without authorization use or cause to be used computer services;
- (6) Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a computer, computer system or computer network;
- (7) Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;
- (8) Willfully use a computer, computer system, computer network, telephone, cellular telephone or any other electronic device or property to annoy, abuse, threaten, or harass another person; and

- (9) Willfully use a computer, computer system, computer network, telephone, cellular telephone or any other electronic device or property to put another person in fear of physical harm or death.

(b) Each violation of any provision of subsection (a) of this Section shall be a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 161 to section 162 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 163. Desertion of Wife or Child under 15**

Every person who shall without good cause abandon his wife in destitute or necessitous circumstances and neglect and refuse to maintain or provide for her, or who shall abandon his or her minor child or children under the age of fifteen (15) years and willfully neglect or refuse to maintain or provide for such child or children, shall be guilty of a misdemeanor.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 162 to section 163 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 164. Maximum Fines and Sentences of Imprisonment**

Unless otherwise specifically provided in Title 6 or another provision of the Code of Laws of the Seminole Nation:

- (a) A person convicted of an offense under this code may be sentenced as follows:
  - (1) If the offense is a Class I Felony, to a term of imprisonment not exceeding two years or to a fine not to exceed \$10,000, or both;
  - (2) If the offense is a Class II Felony, to a term of imprisonment not exceeding three years or to a fine not to exceed \$15,000, or both;
  - (3) If federal law prohibits imposition of a felony sentence for the charged crime, the crime shall be punishable as a misdemeanor;
  - (4) If the offense is a misdemeanor, to a term of imprisonment not to exceed one year or to a fine not to exceed \$5,000.00, or both;
  - (5) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed six months or to a fine not to exceed \$2,500.00, or both;
  - (6) If the offense is a violation, to a term of imprisonment not to exceed one month or to a fine not to exceed \$1,250.00, or both.

(b) The fines listed above may be imposed in addition to any amounts ordered paid as restitution, court costs, costs of incarceration or costs for any court-ordered activities including, but not limited to, drug and alcohol assessments, drug and alcohol testing and drug and alcohol counseling.

(c) Maximum Sentence. A person may be charged and convicted for multiple violations of the same law and may receive the maximum sentence for each violation but the total maximum sentence shall not total more than 9 (nine) years.

(d) Minimum Sentence. The maximum sentence of incarceration shall be as stated in this Section for each of the misdemeanors and felonies. No minimum jail sentence shall be required unless specifically state in the terms of the crime.

(e) Banishment. Banishment, its terms, conditions and duration shall be as specified in this Code.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015; effective July 6, 2015; renumbered from section 163 to section 164 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 165. Intoxication**

(a) A person is guilty of a misdemeanor if, in a public or private place while under the influence of an intoxicating beverage, drugs, or other controlled substance, or a substance having the property of releasing vapors, to any degree, he unreasonably disturbs another person under circumstances not amounting to disorderly conduct.

(b) A judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this Section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release.

(c) The judge may also commit the person convicted to a facility for treatment if it appears that the person is dependent upon the intoxicating beverage, drugs, controlled substance, or vapor producing substance, for a period not to exceed one year.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 164 to section 165 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 166. Shoplifting**

A person is guilty of a misdemeanor if he takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other merchant and with mercantile establishment without the consent of the owner, seller, or merchant and with the intention of converting such goods, wares or merchandise to his own use without having paid the purchase price thereof. A person convicted of shoplifting shall be liable in a civil action for the



retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 165 to section 166 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 167. Gasoline Pump Thievery**

Any person who pumps gasoline into the gasoline tank of a vehicle and leaves the premises where the gasoline was pumped without making payment for the gasoline shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or confinement in the county jail for a period of not more than sixty (60) days, or by both such fine and imprisonment.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 166 to section 167 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 168. Burglary**

A person is guilty of a felony if he breaks into and enters the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either:

(a) By forcibly bursting or breaking the wall, or an outer door, window or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter, or

(b) By breaking in any other manner, being armed with a dangerous weapon or being assisted or aided by one or more confederates then actually present; or

(c) By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 167 to section 168 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 169. Intoxicating Beverage Purchase by Person Under 21 Years of Age Prohibited**

A person who is under twenty-one (21) years of age commits a violation if he purchases, receives, or has in his possession an intoxicating beverage product, or presents or offers to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any intoxicating beverage product. It shall not be unlawful for an employee over eighteen (18) years of age but under twenty-one (21) years of age to handle intoxicating beverage products when required in the performance of the employee's duties.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 168 to section 169 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 170. Furnishing Intoxicating Beverages to a Minor**

(a) A person is guilty of a misdemeanor for a first violation or a second violation committed within one (1) year of the first violation if he sells, barter, or gives to any person under twenty-one (21) years of age any intoxicating beverage. Any person convicted of a third violation within one (1) year of the first violation shall be guilty of a felony.

(b) That the person demanded, was shown, and reasonably relied upon proof of age shall be a rebuttable presumption to any action brought pursuant to this Section. A person cited for violating this Section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation if:

- (1) The individual who purchased or received the intoxicating beverage presented what a reasonable person would have believed was a driver license or other government-issued photo identification purporting to establish that the individual was twenty-one (21) years of age or older; or
- (2) The person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by the individual by performing a transaction scan by means of a transaction scan device.

Provided that this defense shall not relieve from liability any person cited for a violation of this Section if such person failed to exercise reasonable diligence to determine whether the physical description and picture on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 169 to section 170 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 171. Tobacco Purchase by Person Under 18 Years of Age Prohibited**

A person who is under eighteen (18) years of age commits a violation if he purchases, receives, or has in his possession a tobacco product, or presents or offers to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products when required in the performance of the employee's duties.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 170 to section 171 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 172. Furnishing Tobacco Products to a Minor**

A person is guilty of a misdemeanor if he furnishes by gift, sale or otherwise to any minor who is under eighteen (18) years of age any cigarettes, cigarette papers, cigars, bidis, snuff, chewing tobacco, or any other form of tobacco product.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 171 to section 172 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 173. Possession of Intoxicating Beverages in Public**

A person is guilty of a violation if he drinks or possesses intoxicating beverages in public except on the premises of a licensed establishment that is authorized to sell or serve alcoholic beverages. This provision shall be cumulative and in addition to existing law.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 172 to section 173 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 174. Criminal Offenses of the State of Oklahoma Adopted to Extent Not Inconsistent with Nation's Laws**

To the extent not inconsistent with the laws of the Seminole Nation, and to the extent not prohibited by federal law, whoever within the jurisdiction of the Nation is guilty of any act or omission which, although not made punishable by any enactment of Nation, would be punishable if committed or omitted within the jurisdiction of the State of Oklahoma, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment within the Seminole Nation. Nothing in this Section confers jurisdiction in the State of Oklahoma and does not waive sovereign immunity to suit.

[HISTORY: Enacted by TO 2012-03, April 28, 2012; renumbered from section 173 to section 174 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO TRAFFIC OFFENSES**

### **Section 201. Definitions**

(a) The term “motor vehicle” shall mean every device in, upon, or by which any person or property is or may be drawn or transported upon a public road and which device is self-propelled, including motorcycles, but not including any vehicle which is an implement of husbandry and is designed principally for agricultural purposes, nor any mechanical device designed or used principally for construction or maintenance purposes excepting trucks.

(b) A “public road” shall be defined as the entire width between the boundary lines of every right of way within the exterior boundaries of the Nation’s jurisdiction which is maintained by any governmental agency, and, when open to the use of the public, is for the purpose of travel by motor vehicles.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 202. Driver’s License in Possession**

(a) It shall be unlawful to operate a motor vehicle upon any private or public road within the Nation’s jurisdiction without possession of a valid Federal, Tribal, or State operator’s license, chauffeur’s license, or permit, which must be exhibited upon demand by an authorized person.

(b) Failure to have a driver’s license in possession shall be punishable by a fine not to exceed One Hundred-Fifty Dollars (\$150.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 203. Driving in Violation of License Restriction**

(a) It shall be unlawful for an individual to drive any motor vehicle upon any public road at any time while failing to comply with any driving restriction listed on that person’s otherwise valid Federal, Tribal or State driver’s license or permit.

(b) Driving in violation of driver’s license restrictions shall be punishable by a fine not to exceed Two-Hundred Fifty Dollars (\$250.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 204. Driving While License is Suspended or Revoked**

(a) It shall be unlawful to drive any motor vehicle upon any public road at a time when one’s driver’s license or permit or other driving privilege has been denied, suspended, canceled or revoked by any State or Indian Tribe, or when one’s driving privilege has been suspended by the any Court.

(b) Driving while license is suspended or revoked is punishable by a fine not to exceed Three Hundred Dollars (\$300.00), or by a term of imprisonment in the Tribal jail not to exceed

three months, or by supervision or revocation of one's driver's license, or any combination of the above punishments.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 205. Permitting Unauthorized Person to Drive**

(a) It shall be unlawful to knowingly cause or permit any person to operate a motor vehicle upon any public road when that person does not possess a valid Federal, Tribal or State driver's license.

(b) Permitting an unauthorized person to drive shall be punishable by a fine not to exceed Three Hundred Dollars (\$300.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 206. Careless Driving**

(a) It shall be unlawful to operate any motor vehicle upon any public road in a careless or imprudent manner, without due regard for the width, grade, curves, corners, traffic, or existing weather conditions, and the use being made of such road or other attendant circumstances.

(b) Careless driving shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 207. Reckless Driving**

(a) It shall be unlawful to drive any motor vehicle upon any public road within the Nation's jurisdiction in such a manner as to indicate either a wanton or willful disregard for the safety of persons or property.

(b) Reckless driving shall be punishable, upon a first offense, by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or by suspension of driving privileges for a period not to exceed one year or any combination of the above punishments.

(c) A second or subsequent offense for reckless driving shall be punishable by a fine not to exceed One Thousand Five Hundred Dollars (\$1,500.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or by suspension of driving privileges for a period not to exceed one year or any combination of the above punishments.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 208. Transporting an Open Container of Alcohol**

(a) It shall be unlawful to knowingly transport in any vehicle upon a public or private road any alcoholic beverage except in the original container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a vehicle commonly known as a station wagon and panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion.

(b) Transporting an open container of alcohol shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 209. Driving While Intoxicated**

(a) It shall be unlawful to drive or be in actual physical control of any motor vehicle upon any private or public road within the Nation's jurisdiction while under the influence of intoxicating liquor, or controlled dangerous substances, or any other drugs which impair the ability to control or operate a vehicle.

(b) A person is presumed to be under the influence of intoxicating liquor if there is 0.8% or more of alcohol in the blood by weight, and a person is presumed not to be under the influence if there is less than 0.05% of alcohol in their blood by weight. Between such percentages, results of tests showing such fact may be received in evidence, with other tests or observations, for consideration by the court or jury. A breath or blood test must be administered with the consent of the subject, by a qualified operator using a properly maintained apparatus in order to be admissible, provided that if any person refuses to take such test when requested to do so by an officer having a reasonable suspicion that such person may be intoxicated, the person's driving privileges within the Nation's jurisdiction shall be suspended by the Court for a period of six months whether or not such person is convicted of any offense. Such suspension is mandatory.

(c) Driving under the influence shall be punishable by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or by suspension of driving privileges for a period not to exceed two years or any combination of the above punishments.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 210. Duties of Drivers Involved in Accidents Involving Deaths or Personal Injuries**

(a) It shall be unlawful for the driver of any motor vehicle directly involved in an accident resulting in injury to or death of any person or damage to any other moving or attended vehicle to fail to immediately stop his vehicle at the scene of the accident or as close thereto as

possible; or fail to return to and remain at the scene of the accident and render such aid and assistance as may be necessary in the circumstances; or fail to give his name, address and the registration number of his motor vehicle and his operator's or chauffeur's license number and security verification information to all other drivers involved in the accident; or to fail to render to any injured person such assistance as may be necessary in the circumstances; or to fail to notify, or have another notify, the Lighthorse Police Department of the accident and its location as soon as possible.

(b) Failure to perform the duties of drivers involved in accidents involving deaths or personal injuries shall be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or by suspension of driving privileges for a period not to exceed one year.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 211. Duty Upon Striking Unattended Vehicle**

(a) It shall be unlawful for the driver of any motor vehicle which collides with any unattended vehicle to fail to immediately stop and attempt to locate and notify the operator or owner of such vehicle of both the name and address of the driver and owner of the vehicle striking the unattended vehicle; or to fail to leave securely attended in a place where it may be easily seen in the vehicle struck, a written notice giving the name and address of the driver and the circumstances thereof; or to fail to inform the Lighthorse Police Department of the accident and its location as soon as possible.

(b) Failure to perform the duty of a driver upon striking an unattended vehicle shall be punishable by a fine not to exceed Seven Hundred Fifty Dollars (\$750.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or by suspension of driving privileges for a period not to exceed one year.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 212. Duty Upon Striking Highway Fixtures**

(a) It shall be unlawful for the driver of any motor vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway to fail to take reasonable steps to locate and notify the owner or person in charge of such property of such fact and his name and address and of the registered number of the vehicle he is driving; or to fail to report such accident to the Lighthorse Police Department as soon as possible.

(b) Failure to perform the duty of a driver upon striking highway fixtures shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]



**Section 213. When Driver Unable To Report**

(a) It shall be unlawful for another occupant in the vehicle at the time of an accident who is capable of making the report to fail to do so when the driver of the motor vehicle is physically unable to make a required accident report to the Lighthouse Police Department.

(b) Failure to make such a report shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 214. Failure to Signal**

(a) It shall be unlawful to turn a vehicle from a direct course on a public road until such movement can be made with safety, and then only after giving an appropriate signal, either by hand or arm or by a directional signal device.

(b) Failure to properly signal shall be punishable by a fine not to exceed Two Hundred Dollars (\$200.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 215. Failure to Obey Officer**

(a) It shall be unlawful to disobey the lawful command or instruction of any law enforcement officer.

(b) Failure to obey a lawful command shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 216. Following Too Closely**

(a) It shall be unlawful to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon the condition of the highway.

(b) Following too closely shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; subsection numbering corrected on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 217. Stopping for School Bus**

(a) It shall be unlawful, when meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging passengers, to fail to stop immediately and not proceed again until all passengers are received or discharged and the bus is again in motion.

(b) Failure to stop for a school bus shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 216 to section 217 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 218. Entering Public Road from Private Road**

(a) It shall be unlawful for the driver of a motor vehicle about to enter or pass a public road from a private road or driveway to fail to yield the right of way to all vehicles approaching on said public road.

(b) Failure to yield the right of way when entering a public road from a private road shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 217 to section 218 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 219. Right of Way at Intersection**

(a) It shall be unlawful for the driver of a motor vehicle approaching an intersection to fail to yield the right of way to any vehicle approaching from the right, unless otherwise directed by sign, traffic light, or a proper official directing traffic.

(b) Failure to yield the right of way at an intersection shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 218 to section 219 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 220. Failure to Stop at Stop Sign and Yielding Right of Way**

(a) It shall be unlawful for the driver of a motor vehicle to fail to come to a complete stop at all intersections marked by a stop sign before entering an intersection, unless otherwise directed by an officer directing traffic.

(b) It shall be unlawful for the driver of a motor vehicle approaching an intersection marked by a sign requiring him to yield the right of way to fail to decrease the speed of such vehicle and yield the right of way to any traffic proceeding on the road given the right of way by such sign.

(c) Failure to stop at a stop sign or to yield the right of way shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 219 to section 220 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 221. Driving on Right Side**

(a) It shall be unlawful to fail to drive on the right half of the roadway, except when overtaking and passing another vehicle proceeding in the same direction.

(b) Failure to drive on the right side shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended TO 2009-06, December 5, 2009; renumbered from section 220 to section 221 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 222. Passing Oncoming Vehicles**

(a) It shall be unlawful for drivers proceeding in opposite directions to fail to pass each other to the right and to give to the other at least half of the main traveled portion of the roadway.

(b) Improper passing of oncoming vehicles shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 221 to section 222 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 223. Passing and Turning On Curve or Crest**

(a) It shall be unlawful to pass a vehicle going in the same direction unless the driver can see the road for a sufficient distance ahead to pass safely and such passing can be accomplished safely without colliding with oncoming traffic.

(b) It shall be unlawful for a vehicle to be driven so as to pass or turn in any direction on a curve or crest or on any approach to a crest or on a bridge on any approach to a bridge unless such vehicle can pass or be turned safely and seen by traffic approaching in either direction.

(c) Improper passing or turning on a curve or crest shall be punishable by a fine not to

exceed One Hundred Dollars (\$100.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 222 to section 223 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 224. Unsafe Motor Vehicles – Other Than Motorcycles**

(a) It shall be unlawful for any person to drive or cause or knowingly permit to be driven on any public road any motor vehicle which is in such unsafe condition so as to endanger any person or which is not at all times equipped with the following:

- (1) HEADLIGHTS: One on each side of the front of the motor vehicle, said lights to be multibeam so that the driver can adjust lights from bright to dim, and such lights must be in proper working order at all times so as to be seen by oncoming traffic for a reasonable distance during hours of darkness or other times when light conditions require the use of headlights.
- (2) REAR LAMPS: One lighted red lamp on each side of the back of the motor vehicle that will be plainly visible for a reasonable distance to the rear, and such lamp must be in proper working order at all times.
- (3) STOP LIGHTS: All motor vehicles shall be equipped with a stop light in good working order at all times, such stop lights to be automatically controlled by brake adjustment.
- (4) BRAKES: Every motor vehicle shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle.
- (5) HANDBRAKE: Every motor vehicle shall be equipped with a handbrake.
- (6) HORN: Every motor vehicle shall be equipped with a horn in good working order.
- (7) WINDOWS UNOBSTRUCTED - WIPERS: No person shall drive any motor vehicle with any sign or other nontransparent material upon the windshield, side wings, side or rear windows of such vehicle that would obstruct the driver's view, other than a paper or certificate required to be so displayed by law. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other obstructions from the windshield and must be in proper working order at all times.
- (8) LICENSE TAG LIGHT: All motor vehicles shall be equipped with a rear tag light in good working order at all times.

(b) Violation of this section is punishable by a fine not to exceed Two Hundred Dollars (\$200.00) per violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 223 to section 224 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 225. Unsafe Motorcycles**

(a) It shall be unlawful for any person to drive or cause or knowingly permit to be driven on any public road any motorcycle which is in such unsafe condition so as to endanger any person or which is not at all times equipped with the following:

- (1) HEADLIGHT: At least one on the front of the motorcycle, and such lights must be in proper working order at all times so as to be seen by oncoming traffic for a reasonable distance during hours of darkness or other times when light conditions require the use of headlights.
- (2) REAR LAMPS: At least one lighted red lamp on each side of the back of the motorcycle that will be plainly visible for a reasonable distance to the rear, and such lamp must be in proper working order at all times.
- (3) STOP LIGHTS: All motorcycles shall be equipped with a stop light in good working order at all times, such stop lights to be automatically controlled by brake adjustment.
- (4) BRAKES: Every motorcycle shall be equipped with brakes adequate to control the movement of and to stop and hold such motorcycle.
- (5) HORN: Every motorcycle shall be equipped with a horn in good working order.
- (6) LICENSE TAG LIGHT: All motor vehicles shall be equipped with a rear tag light in good working order at all times.

(b) Violation of this section is punishable by a fine not to exceed Two Hundred Dollars (\$200.00) per violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 224 to section 225 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 226. Required Safety Equipment for Motorcycles**

(a) It shall be unlawful for any individual to operate a motorcycle on any public road without wearing the following safety equipment:

- (1) HELMET: All motorcycle operators must wear a helmet designed for use as a motorcycle helmet.

- (2) EYE PROTECTION: All motorcycle operators must wear safety goggles, glasses or other eye protection, or employ any face shield that is included as part of the operator's motorcycle helmet.
- (3) Violation of this section is punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) per violation.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 225 to section 226 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 227. Required Passenger Restraints**

(a) Every operator and front seat passenger of a motor vehicle shall wear a properly adjusted and fastened safety seat belt system, required to be installed in the motor vehicle when manufactured pursuant to 49 C.F.R. Section 571.208.

(b) For the purposes of this section, "motor vehicle" shall not include trucks, truck-tractors, recreational vehicles, motorcycles, or motorized bicycles or vehicles used primarily for farm use which are registered and licensed pursuant to applicable Federal, Tribal or State law, such as 47 O.S. Supp. 2007 § 1134 (as may be amended from time to time).

(c) Any individual who, for medical reasons, is unable to wear a safety seat belt system and who has applied for and received from any Federal, Tribal or State authority an exemption from any other jurisdiction's safety belt requirement, shall be exempt from the requirements of this Section.

(d) This Section shall not apply to an operator of a motor vehicle while performing official duties as a route carrier of the U.S. Postal Service.

(e) Violation of this Section shall be punishable by a fine not to exceed \$200.00.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 226 to section 227 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 228. Required Child Safety Seats**

(a) Every driver, when transporting a child under six (6) years of age in a motor vehicle, shall provide for the protection of said child by properly using a child passenger restraint system. For purposes of this section, "child passenger restraint system" means an infant or child passenger restraint system which meets the federal standards as set by 49 C.F.R. Section 571.213.

(b) Children at least six (6) years of age but younger than thirteen (13) years of age shall be protected by use of a child passenger restraint system or a seat belt.

(c) The provisions of this section shall not apply to:

- (1) The driver of a school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts pursuant to state or federal laws;
- (2) The driver of an ambulance or emergency vehicle;
- (3) The driver of a vehicle in which all of the seat belts are in use;
- (4) The transportation of children who for medical reasons are unable to be placed in such devices; or
- (5) The transportation of a child who weighs more than forty (40) pounds and who is being transported in the back seat of a vehicle while wearing only a lap safety belt when the back seat of the vehicle is not equipped with combination lap and shoulder safety belts, or when the combination lap and shoulder safety belts in the back seat are being used by other children who weigh more than forty (40) pounds. Provided, however, for purposes of this paragraph, back seat shall include all seats located behind the front seat of a vehicle operated by a licensed child care facility or church. Provided further, there shall be a rebuttable presumption that a child has met the weight requirements of this paragraph if at the request of any law enforcement officer, the licensed child care facility or church provides the officer with a written statement verified by the parent or legal guardian that the child weighs more than forty (40) pounds.

(d) A law enforcement officer is hereby authorized to stop a vehicle if it appears that the driver of the vehicle has violated the provisions of this Section and to give an oral warning to said driver. The warning shall advise the driver of the possible danger to children resulting from the failure to install or use a child passenger restraint system or seat belts in the motor vehicle.

(e) A violation of the provisions of this Section shall not be admissible as evidence in any civil action or proceeding for damages.

(f) In any action brought by or on behalf of an infant for personal injuries or wrongful death sustained in a motor vehicle collision, the failure of any person to have the infant properly restrained in accordance with the provisions of this Section shall not be used in aggravation or mitigation of damages.

(g) Violation of this Section shall be punished by a fine of Five Hundred Dollars (\$500.00). This fine shall be suspended and the court costs limited to a maximum of Fifteen Dollars (\$15.00) in the case of the first offense upon proof of purchase or acquisition by loan of a child passenger restraint system.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 227 to section 228 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 229. Speed Limits**

(a) Speed limits on any public road within the Tribe's jurisdiction shall be set by the General Council.

(b) In any area of the Tribal jurisdiction where the speed limit is not posted and where no special hazard exists, the following speeds shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(1) School zones, grounds, and crossings, designated areas - 20 MPH

(2) Residential areas - 30 MPH

(3) Open highway - 65 MPH

(c) It shall be unlawful to exceed the above limits, posted speed limits, or a speed which is reasonable and proper under the conditions prevailing upon the roadway.

(d) The fact that the speed of a motor vehicle is lower than the foregoing prima facie limits does not relieve the driver from the duty of all persons to use due care.

(e) Exceeding the speed limit shall be punishable by a fine not to exceed Seven Hundred Fifty Dollars (\$750.00).

(f) Exceeding a posted speed limit by more than thirty-six (36) miles per hour shall also incur an additional charge of reckless driving.

(g) Operating a motor vehicle at a speed which is not reasonable and proper in the absence of a posted speed limit shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 228 to section 229 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 230. When Lights Are Required To Be On**

(a) It shall be unlawful for a vehicle to be on a public roadway at any time from a half hour after sunset to a half hour before sunrise or at any other time when objects on the road cannot be seen clearly at a distance of five hundred feet because of light conditions without displaying lighted lamps on the vehicle.

(b) Every vehicle stopped or parked on the side of any road or highway during the hours set forth above, shall burn lamps, flares, or otherwise alert other drivers of the potential danger, unless the vehicle is positioned at least thirty inches from the main traveled portion of the roadway in such fashion that no part of the main traveled portion of the roadway, nor the thirty inch safety zone is impeded.



(c) Violation of this section shall be punishable by a fine not to exceed One Hundred Fifty Dollars (\$150.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 229 to section 230 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 231. Pedestrians**

(a) It shall be unlawful for a pedestrian crossing a roadway at any point other than a marked crosswalk or within an unmarked crosswalk at an intersection to fail to yield the right of way to all motor vehicles on the roadway.

(b) Notwithstanding the provisions of subsection (a) herein, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian on any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any person upon a public road.

(c) Violation of this Section shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 230 to section 231 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 232. Discarding Litter on Roads and Roadways**

(a) It shall be unlawful to discard trash or refuse of any type on a roadway or public highway or right-of-way within the Nation's jurisdiction.

(b) Throwing trash on roads and roadways shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 231 to section 232 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 233. Depositing, Dumping or Throwing Destructive Material on Public Property**

(a) It shall be unlawful to deposit, dump or throw any destructive material or injurious material of any type on a roadway, public highway, public property or right-of-way within the Nation's jurisdiction.

(b) Violation of this Section shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 232 to section 233 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 234. Depositing, Dumping or Throwing Lighted, Flaming or Glowing Substance on Public Property**

(a) It shall be unlawful to deposit, dump or throw any lighted, flaming or glowing substance of any type on a roadway, public highway, public property or right-of-way within the Nation's jurisdiction.

(b) Violation of this Section shall be punishable by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 233 to section 234 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 235. Illegal Parking**

(a) It shall be unlawful to stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled part of a public roadway when it is practical to stop, park, or leave such vehicle off such part of said roadway, but in every event a clear and unobstructed width of at least twenty feet of such part of the roadway opposite such standing vehicle shall be left for the free passage of other vehicles, a clear view of such stopped vehicle shall be available from distance of two hundred feet in each direction upon said roadway, and the vehicle must be positioned at least thirty inches outside the main traveled portion of the roadway.

(b) This Section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the vehicle in such position, provided that reasonable provision is made by the driver thereof for the warning and safety of other vehicles traveling upon such roadway until the vehicle can be removed.

(c) It shall be unlawful to stop, park, or leave standing a vehicle except when necessary to avoid collision with other traffic or in compliance with the directions of a police officer or traffic control sign, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within twenty-five feet of a fire hydrant;
- (5) On a crosswalk.

(d) A violation of this Section shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00).

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 234 to section 235 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 236. Failure to Stop when Directed by Police or when Approached by Emergency Vehicle**

(a) It shall be unlawful to fail to immediately pull over to the right-hand edge or curb of the public road clear of any intersection and stop and remain when operating a motor vehicle and when approached by a police vehicle or emergency vehicle making audible or visual signals.

(b) Failure to stop when directed by a police officer or when approached by an emergency vehicle making audible or visual signals shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or a combination thereof.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012; renumbered from section 235 to section 236 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE**

### **BANISHMENT AND EXCLUSION**

#### **Section 301. Purpose**

The Seminole Nation of Oklahoma hereby formalizes the circumstances under which it may utilize the remedies of banishment and exclusion.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 302. Definitions**

(a) “Banishment” shall refer to a legal status in which a member shall lose all rights, privileges and benefits of membership in the Seminole Nation of Oklahoma.

(b) “Exclusion” shall refer to a legal status in which an individual is barred from entering the territorial jurisdiction of the Seminole Nation of Oklahoma, including its business enterprises.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 303. Persons Subject to Banishment**

Any member, age 18 or older, may be banished by the Nation, provided that a banishment decree is not effective against a member who is an elected official until the person has been lawfully removed from office.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 304. Persons Subject to Exclusion**

Any individual, including non-members, may be subject to an order of exclusion.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 305. Grounds for Banishment**

Upon conviction by any court of any of the following criminal offenses, a member may be subject to an order of banishment:

- (a) murder or attempted murder;
- (b) sexual assault or attempted sexual assault, including sexual offenses against minors;

- (c) elder abuse;
- (d) domestic violence;
- (e) engaging in the manufacture or distribution of illegal drugs or psychotoxic substances;
- (f) repeatedly engaging in behavior intended to inflict serious bodily harm or repeatedly engaging in behavior that demonstrates a wanton disregard for the safety and welfare of other individuals;
- (g) stealing or unlawfully retaining possession of records of the Nation or any of its subordinate agencies or business enterprises, or destroying or purposefully concealing records of the Nation or any of its subordinate agencies or business enterprises without authorization;
- (h) stealing or embezzling from the Nation or any of its subordinate agencies or business enterprises; and
- (i) conspiring with others to commit any of the acts stated above. [HISTORY:

Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06,  
December 5, 2009; approved by BIA February 2, 2012.]

### **Section 306. Grounds for Exclusion**

- (a) Any individual convicted of any of the offenses listed in Section 305 may be subject to an order of exclusion
- (b) Additionally, any individual may be subject to an order of exclusion upon conviction by any court of any of the following offenses:
  - (1) Hunting, fishing or trapping without authority from the Nation or contrary to the rules and regulations of the Nation governing such activities;
  - (2) Prospecting without authority from the Nation or the Secretary of the Interior;
  - (3) Mining, cutting timber, grazing or other use, abuse or damage to property of the Nation without authority from the Nation or the Secretary of the Interior;
  - (4) Exploring for or excavating upon items, sites or locations of historic, religious or scientific significance without authority from the Nation or in violation of federal laws or regulations;
  - (5) Committing frauds, confidence games, or usury against members of the Nation, or inducing them to enter into grossly unfavorable contracts of any kind; and

- (6) Doing or threatening to do any act which seriously threatens the peace, health, safety, morals and general welfare of the Nation or its members.

(c) Additionally, non-members may be subject to orders of exclusion for any other reason deemed sufficient by the General Council.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 307. Entry of Order of Banishment or Exclusion**

(a) The Tribal Court may enter an order of banishment or exclusion, as appropriate, in connection with the prosecution of any offense listed in Section 305 or 306. Such an order shall be appealable to the Tribal Supreme Court.

(b) Banishment shall be considered a punishment of last resort and may be imposed in addition to all other fines and penalties that may be imposed for an offense.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**Section 308. Effect of Banishment or Exclusion**

(a) Unless the order of banishment or exclusion states otherwise, a person who is subject to such order shall:

- (1) be immediately expelled from the jurisdiction of the Nation and not be allowed to return for any reason during the period of banishment or exclusion except under the following circumstances:
  - (A) when required to attend court;
  - (B) when ordered to appear before the General Council; or
  - (C) for a period of four (4) days for the funeral of an immediate family member, defined as mother, father, spouse, sibling, child, grandparent or grandchild.
- (2) beginning seventy-two (72) hours after the banishment, have no contact with members of the Nation living within the Nation's jurisdiction, except immediate family members.

(b) Additionally, members subject to an order of banishment shall:

- (1) not be permitted to vote in any regular or special election held by the Nation; and
- (2) not be entitled to receive any form of financial assistance from the Nation.

(c) Absent extenuating circumstances, an individual who owns or resides on allotted land within the Nation's jurisdiction shall be permitted access to that property. Nothing in this Code shall be interpreted as depriving a banished member of his or her interest in said property.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 309. Dissemination of Orders of Banishment or Exclusion**

A copy of any order of banishment or exclusion shall be disseminated to the Nation's law enforcement, business offices and enterprises.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 310. Emergency Exclusion**

Upon application by any party and a demonstration of just cause, the Tribal Court may enter an emergency order of exclusion when it appears that there is immediate danger or the threat of immediate danger to the life, health, safety or property of the Nation or any of its members or employees or where delay would result in irreparable damage or harm.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 311. Enforcement of Orders**

(a) Violations of any order of banishment shall be subject to a fine of Five Thousand Dollars (\$5,000.00) for each occurrence plus six (6) months in jail.

(b) Violations of any order of exclusion shall be punished by a civil fine of Five Thousand Dollars (\$5,000.00) for each occurrence.

(c) Additionally, the Nation, by and through the Attorney General, may bring suit in the Tribal Court to enforce all orders of banishment or exclusion. When reviewing an order of banishment or exclusion entered by the General Council, the Tribal Court shall have no authority or jurisdiction to hear the merits of such order and shall consider and deem as final all matters subject to the General Council's order.

[HISTORY: Enacted by TO 2005-04, March 5, 2005; amended by TO 2009-06, December 5, 2009; approved by BIA February 2, 2012.]

**TITLE 6A  
SEMINOLE DOMESTIC VIOLENCE CODE  
INDEX**

<b>TITLE 6A SEMINOLE DOMESTIC VIOLENCE CODE INDEX.....</b>	<b>i</b>
<b>TITLE 6A DOMESTIC VIOLENCE CODE.....</b>	<b>1</b>
<b>CHAPTER ONE INTRODUCTION.....</b>	<b>1</b>
Section 101. Short Title .....	1
Section 102. Legislative Findings .....	1
Section 103. Purpose .....	1
Section 104. Specific Applicability .....	2
Section 105. Definitions .....	2
<b>CHAPTER TWO GENERAL PROVISIONS.....</b>	<b>6</b>
Section 201. Domestic Violence Court Established .....	6
Section 202. General Jurisdiction.....	6
Section 203. Special Domestic Violence Criminal Jurisdiction.....	6
Section 204. Special Domestic Violence Criminal Jurisdiction; Criminal Conduct Applicable .....	7
Section 205. Evidentiary Standards .....	8
Section 206. Reporting Domestic Violence and Family Violence .....	8
Section 207. Standard of Proof, Defenses.....	9
Section 208. Criminal Sanctions .....	10
Section 209. Statute of Limitations .....	10
Section 210. Non-Waiver of Sovereign Immunity .....	10
Section 211. Savings.....	10
Section 212. Effective Date.....	11
<b>CHAPTER THREE PROTECTION ORDERS.....</b>	<b>12</b>
Section 301. Filing Order of Protection .....	12
Section 302. Confidentiality .....	12
Section 303. Forms of Petitions; Fee Waived .....	13
Section 304. Temporary Ex Parte Protective Orders .....	13
Section 305. Protection Order Service of Process.....	14
Section 306. Protection Order Hearing.....	15
Section 307. Standard of Proof.....	15
Section 308. Protection Order Relief .....	16
Section 309. Mutual Order for Protection Discouraged .....	17



Section 310.	Duration of Protection Orders .....	18
Section 311.	Court Responsibilities .....	18
Section 312.	Transmittal of Protective Orders .....	19
Section 313.	Tribal Registry for Orders of Protection.....	19
Section 314.	Violations of Protection Orders .....	19
Section 315.	Effect of Action by Petitioner or Respondent on Order .....	20
Section 316.	Vacating of Protective Orders .....	20
Section 317.	Full Faith and Credit for Valid Foreign Protection Order .....	21
Section 318.	Valid Foreign Protection Order.....	21
Section 319.	Exclusion from Full Faith and Credit .....	21
Section 320.	Filing of Foreign Protection Order.....	22
<b>CHAPTER FOUR POWERS AND DUTIES OF LAW ENFORCEMENT .....</b>		<b>23</b>
Section 401.	Investigating of Domestic Abuse Complaints .....	23
Section 402.	Mandatory Arrest .....	23
Section 403.	Duties of Law Enforcement Officer.....	24
Section 404.	Filing Complaints.....	25
Section 405.	Liability of Law Enforcement Officers .....	25
Section 406.	Notice of Rights .....	26
Section 407.	Reporting Statistics.....	26
Section 408.	Reporting By Officer .....	27
<b>CHAPTER FIVE LAW ENFORCEMENT OFFICER PROTOCOL .....</b>		<b>28</b>
Section 501.	Responding Officer Protocol .....	28
Section 502.	On-Scene Investigation.....	28
Section 503.	Identification and Collection of Evidence .....	29
Section 504.	Notice of Victim's Rights.....	30
Section 505.	If No Arrest Can Be Made.....	30
Section 506.	Report Writing .....	30
<b>CHAPTER SIX PROSECUTION POLICIES &amp; PROCEDURES .....</b>		<b>32</b>
Section 601.	Legislative Findings for Prosecution of Domestic Violence Cases .....	32
Section 602.	Prosecution Policy .....	32
Section 603.	Initial Case Review .....	32
Section 604.	Subpoena for the Victim.....	33
Section 605.	Pre-Trial Procedure and Arraignment .....	33
Section 606.	Plea Bargaining .....	34

Section 607.	Case Dismissal .....	34
Section 608.	Sentencing Recommendations .....	35
Section 609.	Violation of Treatment Plan.....	36
Section 610.	Violations of Probation.....	37
<b>CHAPTER SEVEN ELDER ABUSE PREVENTION AND PUNISHMENT .....</b>		<b>38</b>
Section 701.	Mandatory Arrest Provision.....	38
Section 702.	Arraignment .....	38
Section 703.	Sentencing.....	39
Section 704.	Order for Protection.....	40
Section 705.	Hearing on Application, Notice .....	40
Section 706.	Relief by the Court .....	41
Section 707.	Emergency Order for Protection .....	42
Section 708.	Service of Order for Protection. ....	42
Section 709.	Assistance of Public Safety in Service or Execution.....	43
Section 710.	Right to Apply for Relief .....	43
Section 711.	Modification of Order for Protection.....	43
Section 712.	Effect on Real Estate .....	43
Section 713.	Copy to Law Enforcement Agency .....	44
Section 714.	Violation of an Order for Protection. ....	44
Section 715.	Reporting Abuse of Elder; Penalty for Failure to Report .....	44
Section 716.	Reports.....	45
Section 717.	Immunity.....	45
Section 718.	Contents of Report.....	45
Section 719.	Reimbursement .....	46
Section 720.	Non-Disclosure .....	46
Section 721.	Follow-up Assessment.....	47
Section 722.	Appellate Review .....	47

**TITLE 6A  
DOMESTIC VIOLENCE CODE**

**CHAPTER ONE  
INTRODUCTION**

**Section 101. Short Title**

This Title shall be entitled "The Domestic Violence Code" (Code).

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 102. Legislative Findings**

The Seminole Nation General Council finds that:

- (a) Domestic violence is a serious offense against the victim, the family, society, and the Seminole Nation of Oklahoma;
- (b) All persons have the right to live free from domestic violence;
- (c) Domestic violence in all its forms poses a major health and law enforcement problem to the Seminole Nation of Oklahoma;
- (d) Domestic violence can be reduced and deterred through intervention of law; and
- (e) There is a need to provide the victims of domestic violence with the protection that the law can provide.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 103. Purpose**

(a) The purpose of this code is to protect all persons, especially women, children, the elderly, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Seminole Nation District Court, from all forms of domestic abuse as defined in this section. This code shall be liberally construed and interpreted in order to achieve its purpose. This code embodies the intent of the Nation to promote the following goals:

- (1) To recognize the illegal nature of domestic abuse;
- (2) To provide victims of domestic abuse with the maximum protection from abuse that can be made available under law;

- (3) To establish an efficient and flexible remedy that discourages violence against and harassment of persons within a family setting, or others with whom the abuser has continuing contact;
- (4) To expand the ability of law enforcement officers to assist victims, to enforce existing laws, and to prevent subsequent incidents of abuse;
- (5) To facilitate the reporting of domestic abuse;
- (6) To develop a greater understanding of the incidence and causes of domestic abuse by encouraging data collection and evaluation; and
- (7) To reduce the incidence of domestic abuse, which has a detrimental and lasting effect on the individual, the family, culture, and society.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 104. Specific Applicability**

The provisions herein apply specifically to the Domestic Violence Code and take precedence over any general laws of applicability.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 105. Definitions**

These definitions shall be liberally construed to protect all persons who are subjected to domestic violence or family violence. This Title also incorporates all definitions that may be contained in Title 6, Criminal Offenses. As used in this section and subject to additional definitions contained in Title 6:

(a) “Abuse” means the purposeful infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and includes but is not limited to assault as defined in Title 6, Criminal Offenses.

(b) “Advocate” means a person who is employed by any of the Nation’s Domestic Violence Programs to provide services to victims of domestic violence and/or sexual assault, or a person who volunteers to provide services after receiving training in the area.

(c) “Caretaker” means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a court of competent jurisdiction;

- (d) “Coercion” means to restrain, compel or dominate by force or threat.
- (e) “Contact” includes but is not limited to:
  - (1) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;
  - (2) Following the other person;
  - (3) Waiting outside the home, property, place of work or school of the other person;
  - (4) Sending or making written communications in any form, including text messaging, IM, and social media, to the other person;
  - (5) Speaking with the other person by any means, including leaving a voicemail message;
  - (6) Communicating with the other person through a third person;
  - (7) Committing a crime against the other person;
  - (8) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person’s relationship with that other person;
  - (9) Communicating with business entities with the intent of affecting some right or interest of the other person;
  - (10) Damaging the other person’s home, property, place of work or school; or
  - (11) Delivering directly or through a third person any object to the home, property, place of work or school of the other person.
- (f) “Court” means the Court Seminole Nation of Oklahoma
- (g) “Domestic Violence” means any act or attempt to commit an offense defined in Title 6, Criminal Offenses, if any of the following applies:
  - (1) The relationship between the victim and the defendant is one of marriage or former marriage or of person residing or having resided in the same household as intimate or dating partners;
  - (2) The victim and the defendant have a child in common;
  - (3) The victim or the defendant is pregnant by the other;
  - (4) The victim and the defendant are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship,

the type of the relationship, and the frequency of the interaction between the persons involved in the relationship;

(h) "Elderly" means any person who has attained the age of fifty-five (55) years;

(i) "Exploitation" means the act or process of using an elder or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement to do so;

(j) "Family Violence" means the same or similar acts committed in domestic violence, and which are offenses defined in Title 6, Criminal Offenses and are dangerous crimes against children as defined in Title 19, Chapter Five, Child Abuse, when such act is directed towards a family or household member instead of an intimate partner. Family violence occurs when the offense is directed at:

- (1) A victim who is related to the defendant or to the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, stepparent, stepchild, step-grandchild, step-brother or step-sister, or brother-in-law or sister-in-law.
- (2) A victim who is a child that resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resided or who has resided in the same household as defendant.

(k) "Indian" means a person who is a member of an Indian tribe, band, nation or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(l) "Intimate relationship" means spouses, former spouses, person who are or have been in a marital-like relationship including same-sex relationships, persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.

(m) "Mandatory arrest" means that a law enforcement officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined by this chapter even though the arrest may be against the expressed wishes of the victim.

(n) "Mental anguish" means to subject an elder to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(o) "Probable cause" is means based on the officer's observations and statements made by the parties involved and witnesses (if any) the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault.

(p) “Prosecuting Attorney” means the Seminole Nation Attorney General or the Attorney General’s assistant or designee.

(q) “Protection Order” a temporary or permanent Court order, injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking. This definition includes any temporary or final order issued by a civil or criminal court if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(r) “Social Services” means any of the contracted Social Services Programs of the Seminole Nation of Oklahoma that can provide a specific service, including treatment, to a domestic violence victim or perpetrator.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO GENERAL PROVISIONS**

### **Section 201. Domestic Violence Court Established**

There is hereby created and established within the Seminole Nation District Court, a Domestic Violence Division whose powers and duties are set forth in this Code. Any District Court Judge, excluding Magistrate Judges, may be assigned to hear cases on the Domestic Violence Division of the Court by the Chief Judge.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203; renumbered from Section 200 to Section 201 on  
August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 202. General Jurisdiction**

(a) Jurisdiction over domestic violence and family violence matters shall be in accordance with the Seminole Nation Constitution, art. XVI, Section 2 and Title 3, Section 3 of the Seminole Nation Code of Law.

(b) The Seminole Nation District Court Domestic Violence Division shall retain jurisdiction over members of federally-recognized Indian tribes and any violations of Orders of Protection entered pursuant to this Code which are alleged to have occurred outside the boundaries of the Nation where such orders are entitled to recognition outside the Nation's boundaries as a matter of full faith and credit.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203; renumbered from Section 201 to Section 202 on  
August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 203. Special Domestic Violence Criminal Jurisdiction**

(a) The Nation hereby exercises "special domestic violence criminal jurisdiction" as a "participating tribe," as defined within 25 U.S.C. 1304, subject to applicable exceptions defined therein, in the Seminole Nation Tribal Court.

(b) The Nation hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

- (1) Resides within the jurisdiction of the Nation; or
- (2) Is employed within the jurisdiction area of the Nation; or
- (3) Is a spouse, intimate partner, or dating partner of:



- (A) A member of the Nation; or
- (B) A member of another Indian tribe who resides within the jurisdiction of the Nation.

(c) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded in the Seminole Nation Criminal Procedure Code shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between the Seminole Nation Criminal Procedure Code and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(d) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Nation and may petition the Court to stay further detention pending the habeas proceeding.

- (1) A court shall grant a stay if the court:
  - (A) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
  - (B) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 202 to Section 203 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 204. Special Domestic Violence Criminal Jurisdiction; Criminal Conduct Applicable**

(a) The Nation exercises the special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

- (1) Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Nation.
- (2) Violations of Protection Orders. An act that occurs within the jurisdiction of the Nation, and:
  - (A) Violates the portion of a protection order that:
    - (i) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence

against, contact or communication with, or physical proximity to the person protected by the order;

- (ii) Was issued against the defendant;
- (iii) Is enforceable by the Nation; and
- (iv) Is consistent with 18 U.S.C. 2265(b).

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 203 to Section 204 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 205. Evidentiary Standards**

### **(a) Testimonial Privileges**

- (1) In a proceeding where a spouse or other family or household member is allegedly the victim of domestic violence, the following evidentiary privileges do not apply to the person that allegedly caused the act of domestic violence:
  - (A) the privilege of confidential communication between spouses, and
  - (B) the testimonial privilege of spouses.
- (2) A victim of domestic violence may prevent an advocate from disclosing confidential oral communication and the written records and reports of the program if the victim claims the advocate-victim privilege. The advocate-victim privilege does not relieve the advocate of the mandatory duty to report child abuse, and does not apply when the advocate is required to give evidence in child abuse court proceedings.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 204 to Section 205 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 206. Reporting Domestic Violence and Family Violence**

(a) The following persons are obligated to report suspected domestic violence or family violence if they believe it is occurring, or is about to occur and they believe the victim is in imminent risk of harm: any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any medical or mental health professional; school principal, school

teacher, or other school official; social worker; child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; peace officer or other law enforcement official; and judge, attorney if not prevented by the attorney client privilege, probation staff, Clerk of the Court, or other judicial system official.

The suspected domestic violence or family violence shall be reported immediately by telephone or otherwise to the Lighthorse Police Department. The reporter may initially be logged in as anonymous.

(b) Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence known to him/her, after notice and hearing, will be assessed a civil penalty in an amount not to exceed \$500.00 and/or community service or domestic violence education hours not to exceed 40 hours.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 205 to Section 206 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 207. Standard of Proof, Defenses**

(a) The civil standard of proof shall apply to proceedings under this Code, except as otherwise specified in this Code. The court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic violence has occurred or is about to occur. The order's purpose shall be to prevent the occurrence of recurrence of domestic violence

(b) A petitioner shall not be denied relief under this Code because:

- (1) the petitioner used reasonable force in self-defense against the respondent;
- (2) the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;
- (3) the petitioner has not filed for a divorce; or
- (4) the petitioner or the respondent is a minor.

(c) Neither intoxication nor spousal immunity shall be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Code.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 206 to Section 207 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 208. Criminal Sanctions**

Nothing in this Title shall prevent the filing of criminal sanctions as defined in Title 6 of the Seminole Nation Code of Laws in addition to the consequences imposed for violation of provisions of the Domestic Violence Code.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 207 to Section 208 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 209. Statute of Limitations**

For purposes of this chapter, the statute of limitations shall be consistent and follow Title 7, section 103 of the Seminole Nation Code of law or any successor code.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 208 to Section 209 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 210. Non-Waiver of Sovereign Immunity**

Nothing in this chapter shall be deemed to constitute a waiver by the Nation of its sovereign immunity for any reason whatsoever.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 209 to Section 210 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 211. Savings**

This chapter takes effect on the date approved by the General Council and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter and such code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture or liability.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 210 to Section 211 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 212. Effective Date**

The provisions of this Code shall become effective thirty (30) days from and after the date of its passage and approval.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 211 to Section 212 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE PROTECTION ORDERS**

### **Section 301. Filing Order of Protection**

- (a) Who may file a petition
  - (1) for herself or himself;
  - (2) on behalf of a minor child;
  - (3) a minor child
  - (4) on behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order;
  - (5) on behalf of a client in the case of social service, housing, health, legal or law enforcement personnel; where prior consent was obtained from the client, or when consent is not necessary or applicable because of the client's incapacity; or

(b) If a petition is filed by or on behalf of a minor child, the Court shall appoint a guardian ad litem to represent the child's interests. Additionally, if the petition involves the child's parent or legal guardian, the Court shall refer the matter to the Seminole Nation's Indian Child Welfare Department.

(c) The Court shall, within eight (8) hours, or as soon as otherwise possible, give notice to the Victims' Advocacy Specialist of all petitions for protective orders.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 302. Confidentiality**

A petitioner seeking protection shall not be required to disclose his or address, place of residence, or place of employment except to the judge, or judicial designee, under oath, for the purposes of determining jurisdiction.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 303. Forms of Petitions: Fee Waived**

(a) No fee will be charged for filing or service of process for any proceeding seeking only the relief provided in this Chapter. However, the court may assess charged and order respondents to pay if the petition is granted or order a petitioner who files a false petition or report under this Code to pay court costs

(b) The petitioner shall prepare the petition or, at the request of the petitioner, the clerk of the court, the domestic violence program coordinator or other persons properly delegated shall assist the petitioner in preparing the same.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 304. Temporary Ex Parte Protective Orders**

(a) Petition, Motion and Order

(1) Upon the filing of a Petition for Domestic Abuse Protection Order and Motion for Temporary Protection order the court shall immediately grant or deny the petitioner's Motion for Temporary Protection Order without a hearing or notice to the respondent. The Court shall grant the motion if it determines that an emergency exists.

(A) A petitioner shall demonstrate an emergency by showing that: (a) the respondent recently committed acts of domestic abuse resulting in physical or emotional injury to the petitioner or another victim, or damage to property; or (b) the petitioner or another victim is likely to suffer harm if the respondent is given notice before the issuance of a protection.

(B) Evidence proving an emergency situation may be based on the petition and motion, police reports, affidavits, medical records, other written submissions, or the victim's statement.

(C) The Temporary Protection Order may include any relief permitted by Section 308(a) of this Code and any other relief necessary to prevent further domestic abuse.

(D) The Temporary Protection Order shall direct the respondent to appear at a hearing to show cause why the Court should not issue a Domestic Abuse Protection Order.

(E) Upon issuing the Temporary Protection Order, the court shall immediately provide for notice to the respondent and notify law enforcement of the order.

- (2) If the court finds that an emergency does not exist, the court shall deny the petitioner's Motion for a Temporary Protection Order and schedule a hearing on the Petition for Domestic Abuse Protection Order.
  - (A) The court shall schedule the hearing within fifteen (15) days (excluding holiday and weekends) of the petition filing.
  - (B) The court shall provide for notice to the Respondent according to 7 of the Seminole Nation Code of Laws.
- (3) The Court shall give a Motion for Temporary Protection Order priority over all other docketed matters and shall issue an order granting or denying the motion within 72 hours.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 305. Protection Order Service of Process**

- (a) A copy of the petition notice of hearing and a copy of any ex parte order issued by the court shall be served, pursuant to the Seminole Nation Civil Procedure Code, upon the respondent in the same manner as a summons. Ex parte orders shall be given priority for service by the Seminole Nation Lighthorse Police Department and can be served twenty-four (24) hours a day.
- (b) When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to the Seminole Nation Juvenile Code.
- (c) When service cannot be made upon the defendant by the police within three (3) days following the filing of a petition for a protective order or the issuance of an emergency ex parte order, the police may contact another law enforcement officer or private investigator to serve the defendant. A temporary ex parte order, a petition for protective order, and a notice of hearing may be transferred to any law enforcement jurisdiction to effect service upon the defendant. If service cannot be completed, the court shall notify the respondent by regular mail, postage prepaid, of the date and time of the hearing. The court shall also notify the petitioner by mail in the event of personal contact has not been made.
- (d) Within fourteen (14) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether a temporary ex parte order has been previously issues, requested or denied. If the petitioner seeks further relief concerning an issue not outlined by the Temporary Ex Parte Protective Order, the court may continue the hearing and/or the Respondent may request a continuance.



[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 306. Protection Order Hearing**

(a) The court shall schedule a full hearing within fifteen (15) days (excluding holidays and weekends) after granting or denying a Temporary Protection Order.

(1) The respondent may move the court to dissolve or modify any Temporary Protection Order within those fifteen (15) days.

(2) The respondent must give at least five (5) days' notice of the motion to the petitioner. The court shall give priority to such motions.

(b) If the petitioner fails to appear at the hearing, the court may continue the hearing for up to fifteen (15) days, or dismiss the petition without prejudice. Any Temporary Protection Order shall remain in effect during the continuance.

(c) If the respondent fails to appear after receiving notice, the hearing shall go forward.

(d) If, after a hearing, the court finds by a preponderance of the evidence that the alleged domestic abuse occurred, the court shall issue a Domestic Abuse Protection Order. The Order may include the relief granted in any Temporary Protection Order and any additional relief that the court deems necessary.

[HISTORY: Enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 307. Standard of Proof**

(a) A court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

(b) A petitioner shall not be denied relief under this section because:

(1) the petitioner used reasonable force in self-defense against the respondent;

(2) the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;

(3) the petitioner has not filed for a divorce; or

(4) the petitioner or the respondent is a minor.

(c) The following shall not be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Code:

- (1) intoxication;
- (2) spousal immunity; or
- (3) provocation.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

**Section 308. Protection Order Relief**

(a) Upon issuing a protective order, temporary or otherwise, the respondent shall abide by the following:

- (1) Respondent shall not abuse, harass, or threaten the Petitioner, or commit any other domestic abuse;
- (2) Respondent shall immediately leave Petitioner's residence;
- (3) Respondent shall stay at least 100 yards away from the Petitioner's residence, place of employment, school, or any other places as ordered to do so;
- (4) Respondent shall not contact Petitioner, in person, in writing, or by telephone;
- (5) Petitioner shall have custody of the minor children;
- (6) Respondent shall be permitted to visit with the children as scheduled and supervised by the Seminole Nation Social Services Department;
- (7) Respondent shall pay to Petitioner the amount ordered by the Court for support of their minor children;
- (8) Respondent shall return to Petitioner any items ordered by the Court;
- (9) Respondent shall not sell, remove, hide, destroy or damage any property owned by Petitioner or by both parties jointly;
- (10) An Officer of the Seminole Nation Lighthorse Police Department shall accompany Petitioner to a residence occupied by the Respondent to:

- (A) obtain physical custody of the child(ren) listed on the Domestic Abuse Protection Order;
  - (B) collect personal belongings listed on the Domestic Abuse Protection Order;
  - (C) ensure that Respondent leaves the parties residence.
- (11) Respondent shall pay to Petitioner the amount ordered by Court for the following:
- (A) lost earnings
  - (B) property taken or damaged
  - (C) travel expenses
  - (D) other expenses
- (12) Respondent shall participate in domestic abuse counseling;
- (13) Petitioner shall participate in domestic abuse counseling;
- (14) Respondent shall participate in alcohol counseling;
- (15) Respondent shall pay to this Court the costs of this proceeding, in cash or a money order made out to Seminole Nation District Court;
- (16) Other relief as ordered by the Court.

(b) The Court shall inform respondent of the prohibitions listed in subsection (a) of this section in writing.

(c) The Court shall inform respondent that it may modify the order of protection without notice and hearing in writing.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 309. Mutual Order for Protection Discouraged**

A protection order entered against both the plaintiff and the defendant shall not be enforceable against the plaintiff unless:

(a) the defendant files a written pleading, such as a cross or counter complaint seeking a protection order, and

(b) the court makes specific findings of harassment, stalking, assault, or domestic or family violence against both the plaintiff and defendant, and

(c) determines that each party is entitled to such an order.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

### **Section 310. Duration of Protection Orders**

(a) A Temporary Ex Parte Protective Order is effective until full hearing with notice is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the temporary ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order. Any temporary ex parte order shall state: “IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU.”

(b) Protective Orders issued after notice after notice and hearing shall remain in effect for a period of four (4) years, or until further order of the court, whichever comes first.

(c) The Court prior to the time a Protective Order expires, may upon a showing of good cause extend the Protective Order for another period of four (4) years, or until further order of the court, whichever comes first.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

### **Section 311. Court Responsibilities**

The court shall:

(a) not grant nor deny relief to the petitioner based on the employment, age, economic, educational, social, political, and/or mental and physical status of the petitioner or respondent.

(b) not deny a petitioner relief requested pursuant to this Code because of a reasonable time lapse between an act of domestic violence and the filing of the petition.

(c) inform the victim of domestic violence about local services and advocacy available through the Nation’s program for victims of domestic violence.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

### **Section 312. Transmittal of Protective Orders**

The court shall:

- (a) Deliver the order to the Nation's program for victims of domestic violence or other appropriate person or agency
- (b) Make reasonable efforts to ensure that the Protective Order is understood by the petitioner, and the respondent, if present;
- (c) Transmit, by the end of the next business day after the order is issued, a copy of the Protective Order to local law enforcement agencies designated by the petitioner; and
- (d) Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

### **Section 313. Tribal Registry for Orders of Protection**

- (a) The District Court of the Seminole Nation shall maintain a registry of all Protective Orders issued by the Nation's District Court. The court clerk shall provide the Nation's Lighthorse Police Department and the program for victims of domestic violence with certified protective orders within 24 hours after issuance.
- (b) The court clerk shall also provide the Nation's Lighthorse Police Department and the program for victims of domestic violence with any modifications, revocation, withdraws, and/or expiration or protective orders.
- (c) The Nation's Lighthorse Police Department shall enter Protective Orders into the National Crime Information Center (NCIC) or other national or regional law enforcement database that the Nation's Lighthorse Police Department utilizes.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

### **Section 314. Violations of Protection Orders**

- (a) Criminal. All violations of an order of protection, temporary or otherwise, shall be prosecuted pursuant to Title 7 of the Seminole Nation Code of Laws. The Prosecuting Attorney has the discretion to file additional charges depending on the circumstance of the violation.
- (b) Civil. In addition to any criminal penalties for failure to comply with the requirements of this Code, except where otherwise stated, failure to comply with the provisions

of the Code shall subject the non-complying offender to a civil penalty of not more than \$2,500 per incident, as assessed by the Court after notice and hearing. Each day wherein the offender fails to come into compliance shall be a separate violation. The Prosecuting Attorney shall be authorized to assist in the enforcement of this provision.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 315. Effect of Action by Petitioner or Respondent on Order**

If the court orders respondent excluded from the residence of petitioner or orders respondent to stay away from petitioner, an invitation by the petitioner to visit or enter does not waive or nullify a Protective Order. Further, the petitioner cannot violate or be arrested for a violation of his/her own Protective Order.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 316. Vacating of Protective Orders**

(a) A party who wishes to have a protective order vacated must move the court, in writing, for such an order.

(b) A protective order shall be vacated only by court order.

(c) In determining whether or not to vacate a protection order, the court shall consider the following:

- (1) whether the respondent has attended counseling and what type of counseling, if required by the order, and for how long and reports from the counseling program as to the attendance, success and any recommendations of the program regarding the respondent;
- (2) whether the circumstances have changed so as to remove the danger to the petitioner from the respondent; and
- (3) any other factors the court deems relevant.

(d) The court clerk shall provide a copy of any subsequent order to all law enforcement departments to whom a copy of the original protective order was delivered under this Chapter.

(e) All the Nation's law enforcement agencies shall enforce any protective order that has neither expired nor been vacated, regardless of the current status of the parties' relationship.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

**Section 317. Full Faith and Credit for Valid Foreign Protection Order**

Any valid protection order issued by a court of another tribe, state, or territory shall be accorded full faith and credit by the courts and law enforcement authorities of the Seminole Nation and enforced as if it were issued in this Nation.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

**Section 318. Valid Foreign Protection Order**

(a) Jurisdiction of issuing court. A protection order issued by a tribal, state, or territorial court shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the tribe, state, or territory. There shall be a presumption in favor of validity where an order of appears authentic on its face.

(b) Notice and hearing by court. A defendant must have been given reasonable notice and the opportunity to be heard before the order of the foreign tribe, state, or territory was issued. Provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

(c) Defenses. Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense of any charge or process filed seeking enforcement of a foreign protection order.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

**Section 319. Exclusion from Full Faith and Credit**

A protection order from a foreign jurisdiction entered against both the plaintiff and the defendant is presumptively not enforceable against the plaintiff unless:

(a) the defendant filed a written pleading, such as a cross or counter complaint, seeking a protection order, and;

(b) the issuing court made specific findings of violence, threats of violence, harassment, domestic or family violence against both the plaintiff and defendant and determined that each party was entitled to such an order.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

**Section 320. Filing of Foreign Protection Order**

(a) A plaintiff who obtains a valid order of protection in another tribe, state, or territory may file that order by presenting a certified copy of the foreign order to the court clerk in the Nation's District Court.

(b) Filings shall be in writing without fee or cost.

(c) A clerk of court shall forward a copy of the foreign protection order to the Seminole Nation Lighthouse Police Department upon application of a plaintiff seeking enforcement.

(d) The clerk shall provide the plaintiff with a copy bearing proof of filing with the court and entry into the tribal protection order registry.

(e) Filing an entry of the foreign order in the Nation's protection order registry shall not be prerequisites for enforcement of a foreign protection order.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]



## **CHAPTER FOUR POWERS AND DUTIES OF LAW ENFORCEMENT**

### **Section 401. Investigating of Domestic Abuse Complaints**

(a) Complaints of Elderly Abuse - When investigating complaints of elder abuse or neglect the complaint shall be investigated and treated the same as any other domestic violence complaint. A custodial arrest should be made and all domestic violence response procedures should be followed and in accordance with sections 601, et seq. herein. If the victim is a "vulnerable adult" a report to Social Services shall be required.

(b) Complaints of Abuse Perpetrated by a Minor Child - When investigating complaints of abuse by a minor child the complaint shall be investigated and treated the same as any other domestic violence complaint. A custodial arrest should be made and procedures for lodging a minor shall be followed.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 105, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

### **Section 402. Mandatory Arrest**

(a) A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe:

- (1) that an assault has occurred within the previous 72 (seventy-two) hours;
- (2) an assault has occurred and has resulted in bodily injury to the victim whether the injury is immediately visible to the officer or not; and/or
- (3) that any physical action has caused another person reasonably in all probability serious bodily injury or death, and the victim is the person's family member, household member or former household member.

(b) If the domestic violence incident is non-alcohol related, any person arrested under Section 402 of this code shall be held without bail, in custody of the Police Department for a period not to exceed twelve (12) hours, as a mandatory cooling down period, provided that such person has posted bond.

(c) If the domestic violence incident is alcohol related any person arrested under Section 402 of this code shall be held for a period not to exceed twenty-four (24) hours. This shall also be construed as a cooling down period, provided that such person has posted bond.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 106, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

**Section 403. Duties of Law Enforcement Officer**

(a) A law enforcement officer who responds to a domestic abuse call shall use all reasonable means to protect the victim and children and prevent further violence, including but not limited to:

- (1) Taking action necessary to assure the safety of the victims and children;
- (2) Confiscating any weapon involved in the alleged domestic abuse;
- (3) Transporting or obtaining transportation of the victim and children to a shelter;
- (4) Assisting the victim in removing essential personal effects;
- (5) Assisting the victim and children in obtaining medical treatment including transportation to a medical facility;
- (6) Giving the victim immediate and adequate notice of rights, remedies and services available.

(b) If a law enforcement officer receives cross complaints of domestic abuse from two or more opposing persons, the officer shall arrest the primary aggressor. In determining whether a person was the primary aggressor, the officer shall consider:

- (1) The Seminole Nation's intent to protect victims of domestic abuse;
- (2) The history of domestic abuse between the persons involved;
- (3) The relative severity of the injuries inflicted or serious threats creating fear of bodily injury;
- (4) The likelihood of future injuries to each person;
- (5) Whether one of the persons acted in self-defense; and
- (6) The officer's experience in handling domestic abuse cases. If the officer determines that one person was the primary aggressor, the officer is not required to arrest the other person believed to have caused physical harm or bodily injury.

(c) A law enforcement officer shall not threaten the arrest of all parties to discourage requests by any party for intervention from any law enforcement.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 107, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 404. Filing Complaints**

(a) The officer making the arrest under this code shall sign a complaint against the alleged abuser on behalf of the Seminole Nation. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

(b) The preliminary report shall be done in eight (8) hours.

(c) The final and complete report shall be completed in forty-eight (48) hours.

(d) The victim may be subpoenaed as the primary witness for the prosecution.

(e) If the abuser and victim are husband and wife, the Communication Privilege shall not apply in Domestic Abuse cases.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 108, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 405. Liability of Law Enforcement Officers**

A law enforcement officer shall not be held liable in any civil proceeding for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this code arising from an alleged incident of domestic violence brought by any party to the incident.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 109, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 406. Notice of Rights**

(a) The officer shall tell the victim of abuse whether a shelter for victims of abuse is available in the community and give the victim immediate notice of legal rights and remedies that are accessible to.

(b) The notice should include the victim's right to the following:

- (1) an order restraining the abuser from further acts of violence;
- (2) an order directing the abuser to leave the household;
- (3) an order preventing the abuser from entering the residence, school, workplace, or place of business;
- (4) an order awarding custody or visitation with any minor children;
- (5) an order directing the abuser to pay support to the victim and minor children when appropriate;
- (6) an order prohibiting the abuser from harassing, annoying, telephoning, contacting, or otherwise communicating with you, either directly or indirectly;
- (7) an order prohibiting the abuser from using or possessing a firearm or other weapon specified by the Court. The forms you need to obtain an order for protection can be obtained from the Seminole Nation District Court Clerk.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 110, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 407. Reporting Statistics**

A record of all reported cases of domestic abuse shall be kept by the police department. A semiannual report shall be made by the police department with the exact number of domestic abuse cases handled in this certain time frame. This will be public information and available to all agencies of the Nation.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 111, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

**Section 408. Reporting By Officer**

When an officer is called to the scene of a domestic abuse report and does not make an arrest he or she shall file a written report as to the reasoning for not making an arrest. This report will be filed with the officer's supervisor.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 112, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

## **CHAPTER FIVE**

### **LAW ENFORCEMENT OFFICER PROTOCOL**

#### **Section 501. Responding Officer Protocol**

- (a) The responding officer(s) shall have the dispatcher request "back up" assistance.
- (b) Responding officer(s) shall approach the scene as a criminal investigation. Officers should use appropriate precautionary procedures when approaching and entering the scene.
- (c) Upon arrival, officer(s) shall:
  - (1) separate all parties involved;
  - (2) identify and secure weapons, if any;
  - (3) determine whether there is a need for medical care;
  - (4) attempt to provide for the safety and care of children when necessary; and
  - (5) determine if the Victims' Advocacy Specialist and/or social services is needed at the scene.
- (d) The Victims' Advocacy Specialist shall be notified whenever an officer responds to a domestic violence situation.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 301, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

#### **Section 502. On-Scene Investigation**

- (a) The officer(s) shall conduct a thorough criminal investigation.
- (b) The officer(s) shall interview the victim, suspect and other witnesses, including children as fully as circumstances allow. Children and other witnesses should be interviewed separately from the suspect, and victim.
- (c) In order to respond effectively, the officer should ask the victim questions such as the following:
  - (1) How often has this happened?
  - (2) What was the worst incident?

- (3) What weapons were used?
- (4) Has the suspect ever been arrested?
- (5) When was the last time you were treated by a doctor for injuries inflicted by the suspect?
- (6) Has the suspect been following, calling, or threatening you?

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 302, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 503. Identification and Collection of Evidence**

(a) The responding officer shall do the following in all incidents involving alleged domestic violence:

- (1) document spontaneous or excited utterances;
- (2) gather statements from the parties and witnesses;
- (3) document injuries - both visible and complained of;
- (4) note the victim's general appearance;
- (5) photograph any injuries;
- (6) photograph the scene and weapons and objects used as weapons;
- (7) complete a "body map" showing all marks, bruises, injuries, etc.;
- (8) weapons should be tagged and preserved for evidence;
- (9) request the tape recording of the initial call (if available) be held and tagged for evidence;
- (10) determine what crimes they have probable cause to believe were committed and who committed them;
- (11) arrest the assailant whenever probable cause exists that the suspect committed a crime of domestic violence or other criminal offense;
- (12) should avoid making a physical arrest of the assailant in the presence of the victim if possible;

(13) should emphasize to the victim and the assailant that the criminal action is being initiated by the officers not the victim;

(b) If the suspect has left the scene and cannot be located within a reasonable time, a warrant shall be obtained based on information and belief.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 303, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 504. Notice of Victim's Rights**

After conducting a thorough criminal investigation at a domestic violence scene officer(s) shall provide a written notice of rights to the victim.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 304, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 505. If No Arrest Can Be Made**

Officer(s) should encourage one party to leave and provide protection while essential property is collected in preparation for leaving and provide assistance with transportation whenever possible.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 305, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 506. Report Writing**

- (a) When documenting a domestic violence response:
  - (1) The victim does not have to sign the report.
  - (2) The victim does not have to write a statement.
  - (3) The victim should not be asked if prosecution is desired.



- (4) The domestic violence report shall include but is not limited to the following:
- (A) Address, date and time of incident.
  - (B) Victim's name, address, telephone number, sex, race, date of birth.
  - (C) Suspect's name, address, telephone number, sex, race, date of birth.
  - (D) Witness name, address, telephone number, sex, race, date of birth.
  - (E) Name of person who called in the complaint.
  - (F) Relationship of victim and suspect.
  - (G) Alcohol or drug use.
  - (H) Narrative of incident.
  - (I) Description of injuries of victim.
  - (J) Description of weapon(s).
  - (K) Medical attention sought, where.
  - (L) Property damage.
  - (M) Officer's name, date, was arrest made.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 306, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

## **CHAPTER SIX**

### **PROSECUTION POLICIES & PROCEDURES**

#### **Section 601. Legislative Findings for Prosecution of Domestic Violence Cases**

(a) Like all other crimes, domestic violence is a violation of Nation's criminal laws and a crime against the Nation itself.

(b) As with all crimes, it is the duty of the Prosecuting Attorney to decide whether a case will be prosecuted, and to what extent.

(c) It is often the case in many jurisdictions that informal procedures are characteristic of domestic violence prosecutions, and frequently the outcome is controlled by the victims themselves. However, such practice often results in non-prosecution and the effect is that the pattern of domestic violence is only temporarily abated and is soon resumed by the aggressor.

(d) Victims are often intimidated or pressured by the defendant to drop the charges, only to see the abuse return soon after. Therefore, the cooperation and willingness of the victim in the prosecution of the offense is only one factor to be considered and will not be determinative of the prosecution of the case. However, understanding, respect, compassion and the victim's privacy will all be considered in each case.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 401, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

#### **Section 602. Prosecution Policy**

It will be the policy of the Attorney General to work closely with the Lighthorse Police Department, Social Services Department and the Victims' Advocacy Specialist in addressing domestic violence issues. The prosecution of all domestic violence crimes shall be conducted within the framework in this Code and as mandated by Title 7 of the Seminole Nation Code of Laws and other applicable tribal laws.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 401, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

#### **Section 603. Initial Case Review**

(a) Referral and Accompanying Reports. In all cases that are referred for prosecution, the respective agency should provide all available information regarding the situation. The

Prosecuting Attorney, with the assistance of the respective agencies, shall compile all police reports, accusatory instruments, medical reports, incident reports, photographs, victim and witness statements, Protective Orders, past criminal histories and all relevant evidence and information that may assist in the assessment and prosecution of the crime.

(b) Initial Contact. Early contact with the victims shall be scheduled through the Victims' Advocacy Specialist or caseworker in order to establish an atmosphere of trust and cooperation. In addition to reviewing the incident, and obtaining statements and other evidence, the Prosecuting Attorney shall provide the victim with information about the court process and try to answer any questions that the victim may have. It shall be made clear to the victim that it is the Nation's case against the defendant and that while each case is different and has its own particular circumstances, decisions as to the ultimate prosecution of the case, plea bargaining, dismissal or withdrawal of charges are not decisions made by the victim. The victim will be informed of what shall be expected of him/her during the proceedings. The victim will be apprised of additional criminal and civil relief that may be available.

(c) Contact Throughout Case. Following initial review of the case, and throughout the pendency of the proceedings as new information is learned, the prosecutor shall assess the possibility of need to amend the charges. In addition, past incidents of uncharged conduct shall be reviewed, occurring within the jurisdiction of the Court and within applicable statute of limitations, to determine if said offense could be provable as separate and new cases.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 402(A), enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 604. Subpoena for the Victim**

The appearance of the victim at all stages of the prosecution shall be secured by subpoena.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 605. Pre-Trial Procedure and Arraignment**

(a) Release. Pretrial release of all defendants shall be governed by the procedures as set forth by in this Code and Title 7 of the Seminole Nation Code of Laws.

(1) Releasing a defendant on simply his/her own recognizance is strongly discouraged. If a defendant is released on his/her own recognizance the court shall order that no further contact be had with the victim.

(b) Orders of Protection shall be routinely sought from the Court if not already initiated prior to arraignment.

(c) The Prosecuting Attorney shall determine if the victim will be participating and cooperating in the case. The remaining evidence shall be evaluated to determine the strength of the case. Either the Prosecuting Attorney or the Victims' Advocacy Specialist will discuss with the victim any reluctance to cooperate.

(d) All victims not appearing for arraignment shall be contacted within five business days by the Prosecuting Attorney or the Victims' Advocacy Specialist to address any special problems or concerns of the victim.

(e) If both parties were arrested, the evidence will be reviewed and evaluated to determine if one was the primary aggressor, whether violence was of a defensive nature, or whether one party has been routinely victimized by the other. If it so appears, the Prosecuting Attorney will take whatever steps that justice requires, including amending the charges to reflect new evidence and recommending that the victimized party be referred to a victim's support group or other similar program in lieu of or in addition to other penalties.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 402(B), enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 606. Plea Bargaining**

(a) Plea bargaining is a discretionary tool available to the Prosecuting Attorney in the prosecution of crimes. Plea bargaining allows the Prosecuting Attorney to tailor sentences, punishments, treatment, conditions and other factors to a particular situation.

(b) Many factors must be considered including, but not limited to the strength of the case, the sufficiency of evidence, and the impact on the victim in determining whether or not a plea bargain is justified under the circumstances.

(c) While the victim may be consulted, his/her desire for, or opposition to, plea bargain is not determinative.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 402(B), enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 607. Case Dismissal**

(a) The Prosecuting Attorney shall determine all charges for which sufficient basis exists to pursue prosecution.

(b) Prior to dismissal, the Prosecuting Attorney shall consider the following factors:

- (1) The continued safety and welfare of the victim;
- (2) Whether there have been other incidents not resulting in prosecution or other cases where the victim has dismissed charges;
- (3) The severity and frequency of past incidents;
- (4) Whether or not former spouses or partners have been subjected to similar abuse;
- (5) The presence or use of weapons;
- (6) Substance abuse;
- (7) Forcible sexual acts, stalking, harassment, homicidal threats, assault, intimidation, violent jealousy, or menacing;
- (8) The control by the defendant over the victim's life and daily routine;
- (9) The victim's mental state;
- (10) The defendant's mental state;
- (11) Violence or threats towards other family members, police officers or bystanders;
- (12) Bizarre or anti-social behavior;
- (13) Prior domestic violence convictions;
- (14) Violation of any protective orders.

(c) The Prosecuting Attorney shall only dismiss a case if the victim's testimony is absolutely essential and there is no other sufficient evidence available to support a prosecution.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 402(D), enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 608. Sentencing Recommendations**

(a) Incarceration should be sentenced to meet the needs of each particular case:

- (1) In those cases where the defendant provides the support for the victim/family, weekends in jail or work release should be considered.
- (2) Split sentences and probation allow for increased supervision and monitoring of the defendant.
- (3) Incarceration should be considered in light of the victim's request, the seriousness of the crime and past criminal history of the defendant.

(b) Unsupervised conditional releases are discouraged. This situation places primary responsibility for monitoring on the victim. If continued monitoring is needed, supervised probation should be sought.

(c) The victim shall not be required to attend any joint counseling sessions.

(d) All sentences should include at a minimum:

- (1) Mandatory completion of a batterer's program;
- (2) Protection Order;
- (3) completion of substance abuse treatment program, if evaluation indicates that it is needed or if otherwise required by law; and
- (4) restitution for medical bills, damage to property and other expenses.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 402(F), enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 609. Violation of Treatment Plan**

In all cases where treatment of some form is required for an offender, that offender shall be required to report to the court on a regular monthly basis with proof of compliance with all prescribed treatment. Failure to do so shall result in a fine of not more than \$5,000.00 for each element of a treatment plan with which an offender has failed to comply. Failure to correct such noncompliance by the next court date shall be deemed a repeat offense subject to an additional fine.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 610. Violations of Probation**

All violations of probation for a domestic violence conviction shall be prosecuted as criminal contempt. The Prosecuting Attorney has the discretion to file additional charges depending on the circumstance of the violation.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 402(G), enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

**CHAPTER SEVEN  
ELDER ABUSE PREVENTION AND PUNISHMENT**

**Section 701. Mandatory Arrest Provision**

- (a) An officer shall:
- (1) arrest and take into custody persons whom the officer has probable cause to believe assaulted an elderly person with whom he/she is residing with or has formerly resided with. No warrant is required to make an arrest under this section.
  - (2) arrest and take into custody a person whom the officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from the residence if the existence of the order can be verified by the officer.
  - (3) arrest under probable cause even though it may be against the expressed wishes of the victim.
  - (4) arrest if there was a threat with a dangerous weapon.
- (b) An officer may arrest when responding to a call if the officer has probable cause to believe that the alleged assailant has within the past twenty-four hours placed the alleged victim in immediate fear of bodily harm.
- (c) Whenever an officer investigates an allegation of an incident described in subsections (a) and (b), whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Seminole Nation Attorney General.
- (d) The officer shall request that the jailer contact an Adult Services Worker, Domestic Violence Specialist and the Department of Social Services immediately following the booking procedure and inform them that an arrest has been made.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 502, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

**Section 702. Arraignment**

- (a) Anyone arrested under this ordinance shall be held until arraignment.
- (b) The victim, either personally or through the Adult Services Worker or Domestic Violence Specialist, shall communicate his/her concerns to the court.



(c) If the defendant enters a plea other than guilty, the victim's advocate shall help the victim prepare a petition for protective order.

(d) If the defendant pleads guilty, the court shall order a pre-sentence investigation is ordered.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 503, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 703. Sentencing**

(a) Sentences for a violation of this Chapter shall be a minimum of six (6) months in jail and a fine of not less than \$500.00, plus court costs.

(b) Substance Abuse and/or Drug Abuse Assessment & Treatment Plan

- (1) If alcohol or drugs play a part in the abuse, a chemical dependency evaluation and complete cooperation with any recommendations for treatment made will be ordered.
- (2) The assailant shall be ordered to participate in the appropriate domestic violence program and must:
  - (A) Attend an intake session for evaluation and placement in a group for domestic violence. This will be accomplished by an Adult Services Worker or a Domestic Violence or by a member of another domestic violence program not later than 10 calendar days after sentencing.
  - (B) Attend a minimum of 12 re-education sessions out of 14 consecutive sessions and attend a minimum of 12 counseling sessions out of 14 consecutive sessions. These sessions will begin immediately following the intake session. The counselor shall submit a record of attendance to the Clerk of Courts. The Clerk of Courts shall maintain a record of attendance.
- (3) In cases of failure to comply the assailant may be found in contempt of court, given a jail sentence, and given a choice of completing the program or going to jail again.
- (4) Failure to attend counseling, violation of an order for protection, or commission of a crime of violence during the order for protection period, will result in immediate review of the case by the court.

(c) Upon any second or subsequent offense offenders shall be sentenced to at least six months in jail not to exceed the maximum penalty. After serving their sentence they must complete the domestic violence counseling as described in (b)(2) above.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 503, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 704. Order for Protection**

(a) A petition for relief under this section may be made by any family or household member on behalf of himself/herself or on behalf of minor family or household members.

(b) A petition for relief shall allege the existence of elder abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(d) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(e) The court shall advise a petitioner of the right to file a motion and affidavit and to sue without cost and shall assist with the writing and filing of the motion and affidavit.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 504, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 705. Hearing on Application. Notice**

(a) Upon receipt of the petition, the court shall order a hearing, which shall be held not later than 14 days from the date of the order.

(b) Personal services shall be made upon the respondent not less than five (5) days prior to the hearing. In the event that personal services cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date.

(c) Notwithstanding the provisions of paragraph (b) above, service may be made by one week published notice provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a law enforcement official was unsuccessful and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven (7) days after publication. The court shall set a new hearing date if necessary to allow the respondent the five (5) day minimum notice required under paragraph (a) above.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 505, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 706. Relief by the Court**

(a) Upon notice and hearing, the court may provide relief as follows:

- (1) Restrain the abusing party from committing acts of elder abuse.
- (2) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner.
- (3) Order the abusing party to participate in treatment or counseling services.
- (4) Award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court.
- (5) Order, at its discretion, other relief as it deems necessary for the protection of a family or household member, including order or directives to the appropriate Seminole Nation tribal official(s).

(b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 506, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

## **Section 707. Emergency Order for Protection**

(a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an emergency order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

- (1) Restraining the abusing party from committing acts of domestic abuse;
- (2) excluding any party from the dwelling they share or from the residence of the other, and from any contact with the victim except by further order of the court.

(b) An emergency order for protection shall be effective for a fixed period not to exceed 14 days, except for good cause.

(c) A full hearing, as provided by this section, shall be set for not later than seven (7) days from the issuance of the temporary order.

(d) The respondent shall be served forthwith a copy of the standing order along with a copy of the petition and notice of the date set for the hearing.

(e) When service is made by published notice, as provided under section 705(c), the petitioner may apply for an extension of the period of the standing order at the same time the petitioner files the affidavit required under that section, the court may extend the standing order for an additional period not to exceed 14 days. The respondent shall be served forthwith a copy of the modified standing order along with a copy of the notice of the new date set for the hearing.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 506, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

## **Section 708. Service of Order for Protection**

Orders are to be served personally upon the respondent by the Nation's Lighthouse Police Department. If the respondent cannot be located the order for protection will be mailed by certified mail to the respondent's last known address.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 508, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

**Section 709. Assistance of Public Safety in Service or Execution**

When an order for protection is issued, upon request of the petitioner, the court shall order the Nation's Lighthouse Police Department to accompany the petitioner and to assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order for protection.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 509, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

**Section 710. Right to Apply for Relief**

A person's right to apply for relief shall not be affected by his/her leaving the residence or household to avoid abuse.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 510, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

**Section 711. Modification of Order for Protection**

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 511, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

**Section 712. Effect on Real Estate**

Nothing in this ordinance shall affect the title to real estate.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 713. Copy to Law Enforcement Agency**

An order for protection granted pursuant to this Chapter shall be forwarded by the clerk of courts within 24 hours to the Nation's Lighthorse Police Department and placed on the Tribal Registry for Orders of Protection.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 512, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 714. Violation of an Order for Protection**

(a) Criminal. All violations of an order of protection, emergency or otherwise, shall be prosecuted pursuant to Title 7 of the Seminole Nation Code of Laws. The Prosecuting Attorney has the discretion to file additional charges depending on the circumstance of the violation.

(b) Civil. In addition to any criminal penalties for failure to comply with the requirements of this Code, except where otherwise stated, failure to comply with the provisions of the Code shall subject the non-complying offender to a civil penalty of not more than \$2,500 per incident, as assessed by the Court after notice and hearing. Each day wherein the offender fails to come into compliance shall be a separate violation. The Prosecuting Attorney shall be authorized to assist in the enforcement of this provision.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 513, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 715. Reporting Abuse of Elder: Penalty for Failure to Report**

(a) Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall immediately report the abuse or suspected abuse to the Nation's Lighthorse Police Department, Domestic Violence Program Coordinator, or to the Nation's Social Services Department.

(b) Any person or caretaker who without good cause fails to report abuse or suspected abuse of elders shall be guilty of an offense and upon conviction for a violation of this section shall be sentenced to imprisonment for a minimum of 30 days in jail and to a fine of not less than \$150.00, plus court costs.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 514, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 716. Reports**

(a) Any report required to be made under this ordinance shall be made in person and orally to a member of the Nation's Lighthouse Police Department, Domestic Violence Program, or the Nation's Social Services Department who shall reduce the report to writing.

(b) Once the report is reduced to a written form, it shall be forwarded to the Nation's Lighthouse Police Department for investigation of the allegations made in the report.

(c) If the allegations are found to be true the Light Horse shall forward a copy of their report to the Nation's Attorney General who shall take the appropriate court action. If the allegations in the report are without merit the Nation's Lighthouse Police Department shall recommend that the case be closed.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 515, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 717. Immunity**

Anyone participating in good faith in making of a report pursuant to this ordinance shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any court proceedings resulting from such report.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 516, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 718. Contents of Report**

Any report required to be completed by this Chapter shall consist of at a minimum:

(a) name, age and address of elder alleged to be abused;

- (b) name and address of person with legal responsibility for the elder that is the subject of the report if it is other than the said elder;
- (c) name and address of the alleged perpetrator;
- (d) nature and extent of the abuse;
- (e) persons who might have been aware of the abuse;
- (f) date(s) and location(s) of when and where the alleged abuse occurred;
- (g) findings and recommendations; and
- (h) any other pertinent information known to the person making the report.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 517, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 719. Reimbursement**

(a) Any person who is convicted of financial exploitation of an elder, shall be ordered by the Seminole Nation District Court to reimburse the elder in full as a part of any plea bargain, guilty plea, finding of guilty by a judge or jury or nolo contendere plea.

(b) If the person has exploited resources other than money from the elder, then the court shall order the exploiter to return the resources immediately or to sign the necessary documents returning the resources to the elder.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 518, enacted by TO 2009-05, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 720. Non-Disclosure**

The name of any person who reports suspected abuse as defined in this Chapter shall not be disclosed to any person unless the person who reported the abuse specifically requests such disclosure or a judicial proceeding results from such report.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015; recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



[HISTORY NOTE: Formerly § 519, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

**Section 721. Follow-up Assessment**

(a) Follow-up will be done at the end of the mandated 14-week sessions, six (6) months after initial sentencing, and one year after initial sentencing.

(b) Domestic Violence Specialist shall do the assessment and shall forward a written copy of findings to the Clerk of Courts and the Attorney General. The Clerk of Courts shall place the assessment in the case file.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 520, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

**Section 722. Appellate Review**

(a) Appellate Court shall not stay the execution of sentences under this ordinance but may review legal issues under its review powers.

- (1) If the Appellate Court determines that legal grounds exist for review then and only then may it stay the execution of sentence, pending its review.
- (2) The Appellate Court shall limit its review to questions of law, leaving factual questions to the court of original jurisdiction.

[HISTORY: Enacted by TO 2015-02, June 6, 2015, effective July 6, 2015;  
recodified from Title 6B to Title 6A on May 26, 2016 pursuant to authority  
granted by SNC Title 21, § 203.]

[HISTORY NOTE: Formerly § 521, enacted by TO 2009-05, December 5, 2009;  
approved by BIA February 2, 2012.]

**TITLE 6B  
METHAMPHETAMINE AND RELATED CONTROLLED DANGEROUS  
SUBSTANCES CODE  
INDEX**

<b>TITLE 6B METHAMPHETAMINE AND RELATED CONTROLLED DANGEROUS SUBSTANCES CODE INDEX .....</b>	<b>i</b>
<b>TITLE 6B METHAMPHETAMINE AND RELATED CONTROLLED DANGEROUS SUBSTANCES CODE .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS .....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Purpose .....	1
Section 103. Construction .....	1
Section 104. Authority to Control .....	1
<b>CHAPTER TWO DEFINITIONS .....</b>	<b>3</b>
Section 201. Definitions .....	3
<b>CHAPTER THREE SCHEDULES .....</b>	<b>8</b>
Section 301. Schedule Administration .....	8
Section 302. Schedule I .....	8
Section 303. Schedule II .....	15
Section 304. Schedule III .....	18
Section 305. Schedule IV .....	21
Section 306. Schedule V .....	24
Section 307. Professional Practice .....	24
Section 308. Exceptions .....	25
Section 309. Burden of Proof .....	25
<b>CHAPTER FOUR WARRANTS, SEARCH, SEIZURE AND DISPOSAL PROCEDURES .....</b>	<b>26</b>
Section 401. Warrants .....	26
Section 402. Arrest .....	26
Section 403. Seizure .....	26
Section 404. Disposal .....	27
Section 405. Use of Vessels .....	27
Section 406. Duty .....	28
Section 407. Confidentiality .....	28
Section 408. Good Faith .....	28

<b>CHAPTER FIVE OFFENSES .....</b>	<b>29</b>
Section 501.    Guilt .....	29
Section 502.    Offenses .....	29
Section 503.    Possession .....	33
Section 504.    Marijuana .....	33
Section 505.    Public Nuisance .....	33
Section 506.    Injunction Authorized .....	33
Section 507.    Civil Immunity .....	34
<b>CHAPTER SIX SENTENCING .....</b>	<b>35</b>
Section 601.    Rehabilitative Measures .....	35
Section 602.    Adult Offenders .....	35
Section 603.    Sentencing Adult Offenders .....	36
Section 604.    Juvenile Offenders .....	37
Section 605.    Sentencing Juvenile Offenders .....	37
Section 606.    Civil Remedies/Non-Indian .....	38
<b>CHAPTER SEVEN SEVERABILITY .....</b>	<b>39</b>
Section 701.    Severability .....	39
<b>CHAPTER EIGHT SOVEREIGN IMMUNITY .....</b>	<b>40</b>
Section 801.    Sovereign Immunity .....	40

**TITLE 6B**  
**METHAMPHETAMINE AND RELATED CONTROLLED DANGEROUS**  
**SUBSTANCES CODE**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Title**

This Act shall be called the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 102. Purpose**

The Seminole Nation of Oklahoma is committed to achieving and maintaining a safe and productive Seminole Nation of Oklahoma free from persons affected by the illegal purchase, transport, distribution, delivery, trafficking or attempted purchase, transport, distribution, delivery, and use of illegal controlled substances or controlled substance analogues within the Seminole Nation of Oklahoma jurisdiction.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 103. Construction**

The individual and collective sections within this Code shall be construed liberally in accordance with the legislative objective of deterring the illegal purchase, transport, distribution, delivery, trafficking or attempted purchase, transport, distribution, delivery, and use of illegal controlled substances or controlled substance analogues with the Seminole Nation of Oklahoma jurisdiction. Nothing in this Code shall be construed as a waiver of tribal sovereign immunity.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 104. Authority to Control**

The Seminole Nation of Oklahoma has the authority to carry out the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code, and may effectuate any tribal laws or policies aimed at carrying out the legislative intent of such Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO DEFINITIONS**

### **Section 201. Definitions**

(a) "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I through V of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code.

(b) "Controlled substance analogue" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

- (1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or
- (2) With respect to a particular individual, which that individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II. The term does not include a controlled substance, any substance for which there is an approved new drug application, or any substance for which an exemption is in effect for investigational use, as sanctioned by the Federal Food and Drug Administration.

(c) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(d) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of drug paraphernalia or of a controlled substance, or an imitation controlled substance, whether or not there is an agency relationship, and includes a sale.

(e) "Drug paraphernalia" means all equipment, products, substances and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance. It includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or imitation controlled substances;
- (2) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances;
- (3) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or imitation controlled substances;
- (4) Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances or imitation controlled substances;
- (5) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances or imitation controlled substances;
- (6) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or imitation controlled substances;
- (7) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or imitation controlled substances;
- (8) In determining whether an object, product, substance or material is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
  - (A) Statements by an owner or by anyone in control of the object concerning its use;
  - (B) Prior convictions, if any, of an owner, or of anyone in control of the object, under any tribal, state or federal law relating to any controlled substance or imitation controlled substance;
  - (C) The proximity of the object, in time and space, to a direct violation of the chapters of this Code;
  - (D) The proximity of the object to controlled substances or imitation controlled substances;
  - (E) The existence of any residue of controlled substances or imitation controlled substances on the object;

- (F) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this Code; the innocence of an owner, or of anyone in control of the object, as to direct violation of this Code shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
  - (G) Instructions, oral or written, provided with the object concerning its use;
  - (H) Descriptive materials accompanying the object, which explain or depict its use;
  - (I) National or local advertising concerning its use;
  - (J) The manner in which the object is displayed for sale;
  - (K) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
  - (L) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
  - (M) The existence and scope of legitimate uses for the object in the community;
  - (N) Expert testimony concerning its use; and
  - (O) The quantity, form or packaging of the product, substance or material in relation to the quantity, form or packaging associated with any legitimate use for the product, substance or material.
- (f) “Immediate precursor” means a substance which:
- (1) Is the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
  - (2) Is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and
  - (3) The control of which is necessary to prevent, curtail or limit the manufacture of the controlled substance.
- (g) “Imitation controlled substance” means a substance that is not a controlled substance, but which by dosage, unit, appearance (including color, shape, size and markings), or by representations made, would lead a reasonable person to believe that the substance is a



controlled substance. In determining whether the substance is an “imitation controlled substance” the court or authority concerned should consider, in addition to all other logically relevant factors, the following:

- (1) Whether the substance was approved by the Federal Food and Drug Administration for over-the-counter (nonprescription or non-legend) sales and was sold in the Federal Food and Drug Administration approved package, with the Federal Food and Drug Administration approved labeling information;
- (2) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
- (3) Whether the substance is packaged in a manner normally used for illicit controlled substances;
- (4) Prior convictions, if any, of an owner, or anyone in control of the object, under tribal, state or federal law related to controlled substances or fraud;
- (5) The proximity of the substances to controlled substances;
- (6) Whether the consideration tendered in exchange for the non-controlled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell. An imitation controlled substance does not include a placebo or registered investigational drug either of which was manufactured, distributed, possessed or delivered in the ordinary course of professional practice or research.

(h) “Manufacture” means the production, preparation, propagation, compounding or processing of drug paraphernalia or of a controlled substance, or an imitation controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include the preparation or compounding of a controlled substance or an imitation controlled substance or the preparation, compounding, packaging or labeling of a narcotic or dangerous drug:

- (1) By a practitioner as an incident to his administering or dispensing of a controlled substance or an imitation controlled substance in the course of his professional practice, or
- (2) By a practitioner or his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(i) “Methamphetamine precursor drug” means any drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(j) “Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(k) “Possessed” or “possessing a controlled substance” means a person, with the knowledge of the presence and nature of a substance, has actual or constructive possession of the substance. A person has actual possession if he has the substance on his person or within easy reach and convenient control. A person who, although not in actual possession, has the power and the intention at a given time to exercise dominion or control over the substance either directly or through another person or persons is in constructive possession of it. Possession may also be sole or joint. If one person alone has possession of a substance possession is sole. If two or more persons share possession of a substance, possession is joint.

(l) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of drug paraphernalia or of a controlled substance or an imitation controlled substance.

(m) “Sale” includes barter, exchange, or gift, or offer therefore, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE SCHEDULES**

### **Section 301. Schedule Administration**

(a) The schedules provided by this Code include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

(b) The schedules listed in the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Substances Code are directly parallel to the Oklahoma Controlled Substance Act. The Seminole Nation of Oklahoma shall revise and republish the schedules of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Substances Code as necessary, however, no more often than once per year.

(c) The chemical composition of a substance may be proved by any commonly acceptable method of identification, including, but not limited to, identification by a trained officer, by field tests, or by laboratory tests.

(d) Chemical substances that are structurally similar to controlled substances are to be treated as controlled substances under the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Substances Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 302. Schedule I**

(a) Schedule I includes substances with the following characteristics: high potential for abuse; no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

(b) The controlled substances listed in this section are included in Schedule I and include any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;

- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextrorphan (except its methyl ether);
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxeridine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacylmorphane;
- (29) Morpheridine;
- (30) Noracymethadol;

- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Racemoramide;
- (42) Trimeperidine;
- (43) Flunitrazepam;
- (44) B-hydroxy-amphetamine;
- (45) B-ketoamphetamine;
- (46) 3,4-methylenedioxy-N-methyl-B-ketoamphetamine;
- (47) 2,5-dimethoxy-4-methylamphetamine;
- (48) 2,5-dimethoxy-4-bromoamphetamine;
- (49) 2,5-dimethoxy-4-nitroamphetamine;
- (50) 2,5-dimethoxy-4-bromophenethylamine;
- (51) 2,5-dimethoxy-4-chlorophenethylamine;
- (52) 2,5-dimethoxy-4-iodoamphetamine;
- (53) 2,5-dimethoxy-4-iodophenethylamine;
- (54) 2,5-dimethoxy-4-methylphenethylamine;
- (55) 2,5-dimethoxy-4-ethylphenethylamine;

- (56) 2,5-dimethoxy-4-fluorophenethylamine;
- (57) 2,5-dimethoxy-4-nitrophenethylamine;
- (58) 2,5-dimethoxy-4-ethylthio-phenethylamine;
- (59) 2,5-dimethoxy-4-isopropylthio-phenethylamine;
- (60) 2,5-dimethoxy-4-propylthio-phenethylamine;
- (61) 2,5-dimethoxy-4-cyclopropylmethylthio-phenethylamine;
- (62) 2,5-dimethoxy-4-tert-butylthio-phenethylamine;
- (63) 2,5-dimethoxy-4-(2-fluoroethylthio)-phenethylamine;
- (64) 5-methoxy-N, N-dimethyltryptamine;
- (65) N-methyltryptamine;
- (66) A-ethyltryptamine;
- (67) A-methyltryptamine;
- (68) N, N-diethyltryptamine;
- (69) N, N-diisopropyltryptamine;
- (70) N, N-dipropyltryptamine;
- (71) 5-methoxy-a-methyltryptamine;
- (72) 4-hydroxy-N, N-diethyltryptamine;
- (73) 4-hydroxy-N, N-diisopropyltryptamine;
- (74) 5-methoxy-N, N-diisopropyltryptamine; or
- (75) 4-hydroxy-N-isopropyl-N-methyltryptamine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;

- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methylhydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Phoclodine; or
- (22) Thebacon.

(d) Any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation.

- (1) Methcathinone;
- (2) 3, 4-methylenedioxy amphetamine;
- (3) 3, 4-methylenedioxy methamphetamine;

- (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (5) 3, 4, 5-trimethoxy amphetamine;
- (6) Bufotenine;
- (7) Diethyltryptamine;
- (8) Dimethyltryptamine;
- (9) 4-methyl-2, 5-dimethoxyamphetamine;
- (10) Ibogaine;
- (11) Lysergic acid diethylamide;
- (12) Mescaline;
- (13) N-benzylpiperazine;
- (14) N-ethyl-3-piperidyl benzilate;
- (15) N-methyl-3-piperidyl benzilate;
- (16) Psilocybin;
- (17) Psilocyn;
- (18) 2, 5 dimethoxyamphetamine;
- (19) 4 Bromo-2, 5-dimethoxyamphetamine;
- (20) 4 methoxyamphetamine;
- (21) Cyclohexamine;
- (22) Salvia Divinorum;
- (23) Salvinorin A;
- (24) Tetrahydrocannabinols;
- (25) Thiophene Analog of Phencyclidine. Also known as: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP;
- (26) Phencyclidine (PCP); or
- (27) Pyrrolidine Analog for Phencyclidine. Also known as 1-(1-Phenylcyclohexyl) - Pyrrolidine, PCPy, PHP.



(e) Unless specifically excepted or unless listed in a different schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:

- (1) Fenethylline;
- (2) Mecloqualone;
- (3) N-ethylamphetamine;
- (4) Methaqualone;
- (5) Gamma-Hydroxybutyric Acid, also known as GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, and sodium oxybutyrate;
- (6) Gamma-Butyrolactone (GBL) as packaged, marketed, manufactured or promoted for human consumption, with the exception of legitimate food additive and manufacturing purposes;
- (7) Gamma Hydroxyvalerate (GHV) as packaged, marketed, or manufactured for human consumption, with the exception of legitimate food additive and manufacturing purposes;
- (8) Gamma Valerolactone (GVL) as packaged, marketed, or manufactured for human consumption, with the exception of legitimate food additive and manufacturing purposes; or
- (9) 1,4 Butanediol (1,4 BD or BDO) as packaged, marketed, manufactured, or promoted for human consumption with the exception of legitimate manufacturing purposes.

(f) The following industrial uses of Gamma-Butyrolactone, Gamma Hydroxyvalerate, Gamma Valerolactone, or 1,4 Butanediol are excluded from all schedules of controlled substances:

- (1) pesticides,
- (2) photochemical etching,
- (3) electrolytes of small batteries or capacitors,
- (4) viscosity modifiers in polyurethane,
- (5) surface etching of metal coated plastics,
- (6) organic paint disbursements for water soluble inks,
- (7) pH regulators in the dyeing of wool and polyamide fibers,

- (8) foundry chemistry as a catalyst during curing,
- (9) curing agents in many coating systems based on urethanes and amides,
- (10) additives and flavoring agents in food, confectionary, and beverage products,
- (11) synthetic fiber and clothing production,
- (12) tetrahydrofuran production,
- (13) gamma butyrolactone production,
- (14) polybutylene terephthalate resin production,
- (15) polyester raw materials for polyurethane elastomers and foams,
- (16) coating resin raw material, and
- (17) as an intermediate in the manufacture of other chemicals and pharmaceuticals.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 303. Schedule II**

(a) Schedule II includes substances with the following characteristics: high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence.

(b) The controlled substances listed in this section are included in Schedule II and include any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subsection, but not including the isoquinoline alkaloids of opium;
- (3) Opium poppy and poppy straw; or

- (4) Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Hydromorphone;
- (8) Isomethadone;
- (9) Levomethorphan;
- (10) Levorphanol;
- (11) Metazocine;
- (12) Methadone;
- (13) Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (14) Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (15) Oxycodone;
- (16) Oxymorphone;
- (17) Pethidine (Meperidine);
- (18) Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;

- (19) Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;
  - (20) Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
  - (21) Phenazocine;
  - (22) Piminodine;
  - (23) Racemethorphan;
  - (24) Racemorphan;
  - (25) Etorphine Hydrochloride salt only;
  - (26) Alfentanil hydrochloride; or
  - (27) Levo-alphaacetylmethadol.
- (d) Any substance which contains any quantity of:
- (1) Methamphetamine, including its salts, isomers, and salts of isomers; or
  - (2) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- (e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
- (1) Phenmetrazine and its salts;
  - (2) Methylphenidate;
  - (3) Amobarbital;
  - (4) Pentobarbital; or
  - (5) Secobarbital.
- (f) Controlled Substances with Legal Use and Purpose. A person to whom or for whose use any controlled substance in Schedule II has been prescribed, sold, or dispensed by a physician, dentist, podiatrist, or pharmacist, or other person authorized under tribal law or state law, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 304. Schedule III**

(a) Schedule III includes substances with the following characteristics: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in treatment in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence.

(b) The controlled substances listed in this section are included in Schedule III unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

- (1) Any substance, which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule.
- (2) Chlorhexadol.
- (3) Glutethimide.
- (4) Lysergic acid.
- (5) Lysergic acid amide.
- (6) Methyprylon.
- (7) Sulfondiethylmethane.
- (8) Sulfonethylmethane.
- (9) Sulfonmethane.
- (10) Benzphetamine and its salts.
- (11) Chlorphentermine and its salts.
- (12) Clortermine.
- (13) Mazindol.
- (14) Phendimetrazine.
- (15) Phenylacetone (P2P).
- (16) 1-Phenycyclohexylamine.
- (17) 1-Piperidinocyclohexanecarbo nitrile (PCC).
- (18) Ketamine, its salts, isomers, and salts of isomers.

- (19) Any material, compound, mixture, or preparation which contains any quantity of the following hormonal substances or steroids, including their salts, isomers, esters and salts of isomers and esters, when the existence of these salts, isomers, esters, and salts of isomers and esters is possible within the specific chemical designation:
- (A) Boldenone,
  - (B) Chlorotestosterone,
  - (C) Clostebol,
  - (D) Dehydrochlormethyltestosterone,
  - (E) Dihydrotestosterone,
  - (F) Drostanolone,
  - (G) Ethylestrenol,
  - (H) Fluoxymesterone,
  - (I) Formebolone,
  - (J) Mesterolone,
  - (K) Methandienone,
  - (L) Methandranone,
  - (M) Methandriol,
  - (N) Methandrostenolone,
  - (O) Methenolone,
  - (P) Methyltestosterone, except as provided in subsection E of this section,
  - (Q) Mibolerone,
  - (R) Nandrolone,
  - (S) Norethandrolone,
  - (T) Oxandrolone,
  - (U) Oxymesterone,

- (V) Oxymetholone,
- (W) Stanolone,
- (X) Stanozolol,
- (Y) Testolactone,
- (Z) Testosterone, except as provided in subsection E of this section, and
- (AA) Trenbolone.
- (BB) Livestock implants as regulated by the Federal Food and Drug Administration shall be exempt.
- (CC) Nalorphine.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
- (2) Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (3) Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
- (4) Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (5) Not more than one and eight-tenths (1.8) grams of dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

- (6) Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
- (7) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (8) Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(d) The following hormonal substances or steroids are exempt from classification as Schedule III controlled dangerous substances:

- (1) Estratest, containing 1.25 mg esterified estrogens and 2.5 mg methyltestosterone;
- (2) Estratest HS, containing 0.625 mg esterified estrogens and 1.25 mg methyltestosterone;
- (3) Premarin with Methyltestosterone, containing 1.25 mg conjugated estrogens and 10.0 mg methyltestosterone;
- (4) Premarin with Methyltestosterone, containing 0.625 mg conjugated estrogens and 5.0 mg methyltestosterone;
- (5) Testosterone Cypionate - Estradiol Cypionate injection, containing 50 mg/ml Testosterone Cypionate; and
- (6) Testosterone Enanthate - Estradiol Valerate injection, containing 90 mg/ml Testosterone Enanthate and 4 mg/ml Estradiol Valerate.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 305. Schedule IV**

(a) Schedule IV includes substances with the following characteristics: low potential for abuse relative to substances listed in Schedule III; currently accepted medical use in treatment in use in the United States; and abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

(b) The controlled substances listed in this section are included in Schedule and include any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the



central nervous system:

- (1) Chloral betaine;
- (2) Chloral hydrate;
- (3) Ethchlorvynol;
- (4) Ethinamate;
- (5) Meproamate;
- (6) Paraldehyde;
- (7) Petrichloral;
- (8) Diethylpropion;
- (9) Phentermine;
- (10) Pemoline;
- (11) Chlordiazepoxide;
- (12) Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens;
- (13) Diazepam;
- (14) Oxazepam;
- (15) Clorazepate;
- (16) Flurazepam and its salts;
- (17) Clonazepam;
- (18) Barbitol;
- (19) Mebutamate;
- (20) Methohexital;
- (21) Methylphenobarbital;
- (22) Phenobarbital;

- (23) Fenfluramine;
- (24) Pentazocine;
- (25) Propoxyphene;
- (26) Butorphanol;
- (27) Alprazolam;
- (28) Halazepam;
- (29) Lorazepam;
- (30) Prazepam;
- (31) Temazepam;
- (32) Triazolam;
- (33) Carisoprodol;
- (34) Ephedrine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients; or
- (35) Dichloralphenazone.

(c) The following non-narcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances:

- (1) Breathe-Aid,
- (2) BronCare,
- (3) Bronchial Congestion,
- (4) Bronkaid Tablets,
- (5) Bronkaid Dual Action Caplets,
- (6) Bronkotabs,
- (7) Bronkolixir,
- (8) NeoRespin,
- (9) Pazo Hemorrhoid Ointment and Suppositories,

- (10) Primatene Tablets,
- (11) Primatene "Dual Action" Formula,
- (12) Quelidrine,
- (13) Resp, and
- (14) Vatronal Nose Drops.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 306. Schedule V**

(a) Schedule V includes substances with the following characteristics: low potential for abuse relative to the controlled substances listed in Schedule IV; currently accepted medical use in treatment in the United States; and limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

(b) The controlled substances listed in this section are included in Schedule V and include any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
- (2) not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
- (3) not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
- (4) not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit, or
- (5) not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 307. Professional Practice**

A person may lawfully possess or have under his control a controlled substance if such person obtained the controlled substance directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of a practitioner's professional practice.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 308. Exceptions**

The religious use of peyote and its derivatives in bona fide religious ceremonies of the Native American Church, and by members of the Native American Church and the Church of the Firstborn is specifically excepted from the Seminole Nation of Oklahoma Related Controlled Substances Act.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 309. Burden of Proof**

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of the Seminole Nation of Oklahoma Methamphetamine and Controlled Substances Code, the burden of proof of any exception, excuse, proviso or exemption, shall be upon the defendant.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FOUR**

### **WARRANTS, SEARCH, SEIZURE AND DISPOSAL PROCEDURES**

#### **Section 401. Warrants**

A search warrant may issue, and execution and seizure may be had, as provided in the rules of criminal procedure for the Seminole Nation of Oklahoma, for any controlled substance or controlled substance analogue unlawfully in the possession or under the control of any person, or for any drug paraphernalia for the unauthorized administration or use of controlled substances or controlled substance analogues in the possession or under the control of any person.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 402. Arrest**

(a) An arrest warrant may issue and execution may be had, as provided in the rules of criminal procedure for the Seminole Nation of Oklahoma, for any controlled substance or controlled substance analogue unlawfully in the possession or under the control of any person, or for any drug paraphernalia for the unauthorized administration or use of controlled substances or controlled substance analogues in the possession or under the control of any person.

(b) Any peace officer of the tribe, or any other Seminole Nation of Oklahoma commissioned or deputized officer with tribal authority may arrest without a warrant for violation of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code, if such arrest is necessary to protect the immediate health and security of the Seminole Nation of Oklahoma and its citizens.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 403. Seizure**

Any peace officer of the tribe, or any other Seminole Nation of Oklahoma commissioned or deputized officer with tribal authority, upon making an arrest for a violation of this Code, shall seize without warrant any controlled substance or controlled substance analogue or drug paraphernalia kept for the unauthorized administration or use of a controlled substance or controlled substance analogue in the possession or under the control of the person or persons arrested, providing such seizure shall be made incident to the arrest.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 404. Disposal**

(a) The court shall order such controlled substances, controlled substance analogues, or drug paraphernalia forfeited and destroyed. A record of the place where said controlled substances, controlled substance analogues, or drug paraphernalia were seized, of the kinds and quantities of controlled substances, controlled substance analogues, or drug paraphernalia so destroyed, and of the time, place and manner of destructions, shall be kept, and a return under oath, reporting the destruction of the controlled substances, controlled substance analogues, or drug paraphernalia shall be made to the court.

(b) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance, controlled substance analogue or drug paraphernalia in violation of the Seminole Nation of Oklahoma Methamphetamine and Controlled Substances Code, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used, or intended to be used, to facilitate any violation of such Code shall be forfeited, except that no property shall be forfeited under this subsection to the extent of the interest of an owner by reason of any act or omission established by him to have been committed without his knowledge or consent.

(c) Any moneys, coin, or currency found in close proximity to forfeitable controlled substances, controlled substance analogues, or drug paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled substances, controlled substance analogues or drug paraphernalia are presumed to be forfeitable under this subsection. The burden of proof shall be upon claimants of the property to rebut this presumption.

(d) The term “arrest,” for purposes of this Section, shall include the taking of a child into custody.

(e) Any peace officer of the tribe, or any other Seminole Nation of Oklahoma commissioned or deputized officer with tribal authority carrying out the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code may take into evidence any items used to violate or to attempt to violate any section of Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code. Such evidence shall be turned over to the tribal prosecutor’s office according to the rules of the Seminole Nation of Oklahoma Lighthouse Police.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 405. Use of Vessels**

The Seminole Nation of Oklahoma Lighthouse Police have the authority to use any vessel, vehicle, aircraft or other mode of transportation in carrying out the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 406. Duty**

It is hereby made the duty of the Seminole Nation of Oklahoma Lighthorse Police, its officers, agents, and representatives, and all peace officers within the Seminole Nation of Oklahoma, to enforce the laws of the Seminole Nation of Oklahoma relating to controlled substances and controlled substance analogues.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 407. Confidentiality**

The Seminole Nation of Oklahoma Lighthorse Police shall keep all complaints, investigatory reports, and information confidential, except when disclosure is necessary to effectuate the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code and the laws of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 408. Good Faith**

Any peace officer of the tribe, or any other Seminole Nation of Oklahoma commissioned or deputized officer with tribal authority, whose actions and conduct are carried out in a good faith effort to effectuate the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code and the laws of the Seminole Nation of Oklahoma shall be held immune from any criminal or civil liability arising from such conduct.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FIVE OFFENSES**

### **Section 501. Guilt**

Any person who violates this Code with respect to any controlled substance or controlled substance analogue is guilty of a criminal offense under the laws of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 502. Offenses**

Except as authorized for legal purposes under a valid prescription or for some legal professional, medical or veterinarian purpose,

(a) A person commits the offense of unlawful possession of a controlled substance if that person possesses or has under his control a controlled substance.

(b) A person commits the offense of unlawful possession of a controlled substance analogue if that person possesses or has under his control a controlled substance analogue.

(c) A person commits the offense of fraudulently attempting to obtain a controlled substance if he obtains or attempts to obtain a controlled substance or procures or attempts to procure the administration of the controlled substance by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address.

(1) The crime of fraudulently attempting to obtain a controlled substance shall include, but shall not be limited to nor be limited by, the following:

- (A) Knowingly making a false statement in any prescription, order, report, or record used for medical or veterinarian treatment;
- (B) For the purpose of obtaining a controlled substance, falsely assuming the title of, or representing oneself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, podiatrist, veterinarian, or other authorized person;
- (C) Making or uttering any false or forged prescription or false or forged written order;
- (D) Affixing any false or forged label to a package or receptacle containing controlled substances;



(E) Possess a false or forged prescription with intent to obtain a controlled substance; and

- (2) Information communicated to a physician in an effort to unlawfully procure a controlled substance or unlawfully to procure the administration of any such drug shall not be deemed a privileged communication; provided, however, that no physician or surgeon shall be competent to testify concerning any information which he may have acquired from any patient while attending him in a professional character and which information was necessary to enable him to prescribe for such patient as a physician, or to perform any act for him as a surgeon.

(d) A person commits the offense of unlawful distribution of a controlled substance to a minor if he violates this Code by distributing or delivering any controlled substance to a person under seventeen years of age who is at least two years that person's junior. It is not a defense to a violation of this section that the defendant did not know the age of the person to whom he was distributing or delivering.

(e) A person commits the offense of unlawful purchase or transport of a controlled substance with a minor if he knowingly permits a minor child to purchase or transport illegally obtained controlled substances.

(f) A person commits the offense of distribution or delivery of a controlled substance near a school or park if such person violates this Code by unlawfully distributing or delivering heroin, cocaine, LSD, amphetamine, or methamphetamine to a person in or on, or within one thousand feet of, the real property comprising a public school, public park, library, recreational area, camping area or other public place set aside for public recreation.

(g) A person commits the offense of distribution or delivery of a controlled substance near public housing or other governmental assisted housing if he violates this Code by unlawfully distributing or delivering any controlled substance to a person in or on, or within one thousand feet of the real property comprising public housing or tribal governmental assisted housing.

(h) A person commits the offense of unlawful endangerment of property if, while engaged in or as a part of the enterprise for the production of a controlled substance, the person protects or attempts to protect the production of the controlled substance by creating, setting up, building, erecting or using any device or weapon which causes or is intended to cause damage to the property of, or injury to, another person.

(i) A person commits the offense of trafficking drugs in the first degree if the person

- (1) distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than thirty grams of a mixture or substance containing a detectable amount of phencyclidine (PCP);
- (2) distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than thirty grams of any material,

compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, optical isomers and salts of its optical isomers; phenmetrazine and its salts; or methylphenidate;

- (3) distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture or produce more than thirty grams of any material, compound, mixture or preparation which contains any quantity of 3,4-methylenedioxymethamphetamine; or
- (4) possesses or has under his/her control, purchases or attempts to purchase, or brings into this tribal jurisdiction more than one hundred fifty grams of a mixture or substance containing a detectable amount of coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine salts and their optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the foregoing substances.

(j) A person commits the offense of trafficking drugs in the second degree if the person possesses or has under his/her control, purchases or attempts to purchase, or brings into this tribal jurisdiction

- (1) more than two grams of a mixture or which contains cocaine base.
- (2) more than five hundred milligrams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).
- (3) more than four grams of phencyclidine.
- (4) more than four grams of any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, isomers and salts of its isomers; phenmetrazine and its salts; or methylphenidate.
- (5) more than four grams of any material, compound, mixture or preparation which contains any quantity of 3,4-methylenedioxymethamphetamine.

(k) A person commits the offense of contributing to the illegal possession or use of a controlled substance if the person provides any reagents, solvents or precursor materials to include Schedule I and II chemicals used in the production of a controlled substance to any other person knowing that the person to whom such materials are provided intends to use such materials for the illegal production of a controlled substance.

(l) A person commits the offense of unlawful possession of drug paraphernalia if the person uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an controlled substance analogue.

(m) A person commits the offense of unlawful transfer of drug paraphernalia if the person delivers, possesses with intent to deliver, or manufacture, with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(n) A person commits the offense of unlawful possession of a controlled substance if the person possesses a controlled substance analogue in violation of this Code.

(o) A person commits the offense of unlawful possession with intent to deliver a controlled substance if the person delivers, possesses with intent to deliver, manufactures with intent to deliver, or causes to be delivered any controlled substance analogue.

(p) A person commits the offense of unlawful possession of a methamphetamine precursor drug if the person possesses any methamphetamine precursor drug with the intent to manufacture amphetamine, methamphetamine or any of their analogues. Possession of more than twenty-four grams of any methamphetamine precursor drug or combination of methamphetamine precursor drugs shall be prima facie evidence of intent to violate this section.

(q) A person commits the offense of unlawful marketing ephedrine if the person markets, sells, distributes, advertises or labels any drug product containing ephedrine, its salts, optical isomers and salts of optical isomers, or pseudoephedrine, its salts, optical isomers and salts of optical isomers, for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug Final Monograph or Tentative Final Monograph or approved new drug application.

(r) A person commits the offense of unlawful possession of chemical for production of methamphetamine if the person possess chemicals listed in the schedules of the Seminole Nation of Oklahoma Methamphetamine and Controlled Substances Code, or reagents, or solvents, or any other chemicals proven to be precursor ingredients of methamphetamine or amphetamine, as established by expert testimony, with the intent to manufacture, compound, convert, produce, process, prepare, test, or otherwise alter that chemical to create a controlled substance or a controlled substance analogue .

(s) A person commits the offense of distribution of a controlled substance, when the person delivers, distributes, manufactures or produces a controlled substance, controlled substance analogue or precursor controlled substance. This offense includes attempted delivery, distribution, manufacture or production.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 503. Possession**

Possession of a controlled substance, controlled substance analogue or precursor substance is prima facie evidence of intent to violate this code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 504. Marijuana**

Any Indian who shall plant, grow, cultivate, harvest or gather, sell, barter, or give away or have in possession any Marijuana shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to incarceration for a period not to exceed six (6) months, or to a fine not to exceed three hundred and fifty dollars (\$350.00), or to both such fine and imprisonment, with costs.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 505. Public Nuisance**

Any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to for the purpose of possessing, keeping, transporting, distributing or manufacturing controlled substances shall be deemed a public nuisance.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 504 to Section 505 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 506. Injunction Authorized**

Any Seminole Nation of Oklahoma Court or designee, within the boundaries of the Seminole Nation of Oklahoma may issue an injunction, enjoining the activity or conduct of any person, if such activity or conduct, demonstrated by clear and convincing evidence, violates any provision of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 505 to Section 506 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 507. Civil Immunity**

Any person who reports suspicious activity or suspicious conduct related to a possible violation of a provision of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code shall be held immune from civil liability for any injury arising from such report.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 506 to Section 507 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER SIX SENTENCING**

### **Section 601. Rehabilitative Measures**

(a) In carrying out the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code, the court shall consider rehabilitative measures in lieu of jail time, if;

- (1) The offender is a juvenile;
- (2) The offender is a first-time offender under the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code; or
- (3) The court finds the offender is enrolled in a behavioral health program aimed at preventing drug use relapse.

(b) In cases of first-time offenses or in cases where the offender is enrolled in behavioral health program the court is not required to consider rehabilitative measures in lieu of jail if it finds the offense is of such severe magnitude it would reasonably be certain to compromise or jeopardize public health or safety of the tribal community.

(c) The court may order the offender to complete rehabilitative measures, including;

- (1) Seminole Nation of Oklahoma Behavioral Health programs;
- (2) Indian Health Service Behavioral Health programs;
- (3) Other community or private behavioral health programs;
- (4) Traditional healing and wellness activities sanctioned by the Nation or Indian communities;
- (5) Drug court programs; or
- (6) Any other rehabilitative measures the court deems proper in providing non-punitive, rehabilitative treatment to the offender.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 602. Adult Offenders**

Adult offenders are individuals over the age of eighteen who are convicted of an offense under the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 603. Sentencing Adult Offenders**

(a) Any adult person who has been convicted of a criminal offense, under the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code, may be sentenced to one or a combination of the following penalties:

- (1) Imprisonment for a period not to exceed a maximum of one year in jail;
- (2) A monetary fine in an amount not to exceed (\$5,000); or
- (3) Both imprisonment and a fine.

(b) In addition to or in lieu of the penalties of this section, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) In addition to or in lieu of the penalties provided in this section, the court may require a convicted offender who has inflicted injury upon the person or property of the tribal government, or who has incurred costs to the tribal government by his/her actions, to make restitution or compensate the tribal government by means of labor or service for the benefit of the tribal government.

(d) If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him/her a reasonable period of time to pay the entire sum or allow him/her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him/her in contempt of court and imprison him/her accordingly.

(e) Any adult person who has been convicted of a criminal offense under the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code shall not have such conviction expunged from his/her criminal record, even after the court's sentence has been completed.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 604. Juvenile Offenders**

Juvenile Offenders are individuals under the age of eighteen who are convicted of an offense under the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 605. Sentencing Juvenile Offenders**

(a) The Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code aims to reflect the Seminole Nation of Oklahoma's custom and tradition of protecting its youth and moderating justice programs aimed at intervening in young lives for a positive impact towards healing and wellness. The sentencing procedures contained in this section are mandated by tribal law and shall not be deviated from by a court imposing a sentence under this code.

(b) Any juvenile convicted of a first offense under the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code shall be sentenced to a Rehabilitative Measure as set forth in this code.

(c) Any juvenile convicted of a second or subsequent offense under the Seminole Nation of Oklahoma Methamphetamine and Related Controlled Dangerous Substances Code shall be sentenced to a Rehabilitative Measure and may also be sentenced to one or a combination of the following:

- (1) Imprisonment for a period not to exceed a maximum of one year in jail;
- (2) A money fine in an amount not to exceed (\$5,000); or
- (3) Imprisonment and a fine.

(d) In addition to or in lieu of the penalties provided in this section, the court may require a convicted juvenile offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(e) In addition to or in lieu of the penalties provided in this section, the court may require a convicted juvenile offender who has inflicted injury upon the person or property of the tribal government, or who has incurred costs to the tribal government by his/her actions, to make restitution or compensate the tribal government by means of labor for the benefit of the tribal government.

(f) If, solely because of indigence, a convicted juveniles offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him/her a reasonable period of time to pay the entire sum or allow him/her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him/her in contempt of court and sentence him/her according to Seminole Nation of Oklahoma tribal laws.

(g) Any juvenile person who has been convicted of a criminal offense, under the provisions of the Seminole Nation of Oklahoma Methamphetamine and Related Controlled



Dangerous Substances Code, shall be eligible to have the first of such convictions expunged from his/her criminal record after the court's sentence has been completed. The court may order expungement as to the first offense when;

- (1) The offender has reached the age of eighteen, and
- (2) The offender has complied with all court orders for rehabilitation and other sentencing imposed as a result of such conviction.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 606. Civil Remedies/Non-Indian**

(a) The Seminole Nation of Oklahoma finds that the illegal purchase, transport, distribution, delivery, trafficking or attempted purchase, transport, distribution, delivery, trafficking use of illegal controlled substances or controlled substance analogues with the Seminole Nation of Oklahoma jurisdiction has a direct effect on the health, welfare, economic security and political integrity of the Seminole Nation of Oklahoma.

(b) Any Seminole Nation of Oklahoma court, or its designee, exercising authority over incidents arising within the boundaries of the Seminole Nation of Oklahoma may utilize any civil remedies, including but not limited to remedies relating to the Seminole Nation of Oklahoma's customs and traditions, if the offense is committed by a non-Indian.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 605 to Section 606 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER SEVEN SEVERABILITY**

### **Section 701. Severability**

If any part of this Ordinance is found to be invalid by any court of competent jurisdiction or by the United States Department of the Interior, it shall be severed and the remaining parts shall remain in effect.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; numbered Section 701 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER EIGHT**

### **SOVEREIGN IMMUNITY**

#### **Section 801. Sovereign Immunity**

Nothing in this code is intended to be nor shall be construed as a waiver of tribal sovereign immunity.

[HISTORY: Enacted by TO 2010-05, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6 to Title 6B on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; numbered Section 801 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 6C  
TRIBAL SEX OFFENDER REGISTRATION CODE  
INDEX**

<b>TITLE 6C TRIBAL SEX OFFENDER REGISTRATION CODE INDEX.....</b>	<b>i</b>
<b>TITLE 6C TRIBAL SEX OFFENDER REGISTRATION CODE.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL MATTERS.....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Purpose.....	1
Section 103. Need .....	1
Section 104. Creation of Registries.....	2
<b>CHAPTER TWO TERMINOLOGY AND COVERED OFFENSES .....</b>	<b>3</b>
Section 201. Definitions .....	3
Section 202. Covered Offenses.....	5
<b>CHAPTER THREE TIERED OFFENSES .....</b>	<b>10</b>
Section 301. Tier 1 Offenses .....	10
Section 302. Tier 2 Offenses .....	11
Section 303. Tier 3 Offenses .....	12
<b>CHAPTER FOUR REQUIRED INFORMATION.....</b>	<b>14</b>
Section 401. General Requirements.....	14
Section 402. Criminal History .....	14
Section 403. Date of Birth.....	15
Section 404. DNA Sample .....	15
Section 405. Driver’s Licenses, Identification Cards, Passports, and Immigration Documents.....	15
Section 406. Employment Information.....	16
Section 407. Finger and Palm Prints .....	16
Section 408. Internet Identifiers .....	16
Section 409. Name .....	17
Section 410. Phone Numbers.....	17
Section 411. Picture .....	17
Section 412. Physical Description .....	18
Section 413. Professional Licensing Information.....	18
Section 414. Residence Address.....	19
Section 415. School .....	19
Section 416. Social Security Number .....	19

Section 417. Temporary Lodging .....	20
Section 418. Offense Information.....	20
Section 419. Vehicle Information.....	20
Section 420. Frequency, Duration and Reduction .....	21
Section 421. Requirements for In Person Appearances .....	22
<b>CHAPTER FIVE REGISTRATION .....</b>	<b>23</b>
Section 501. Where Registration is Required.....	23
Section 502. Timing of Registration .....	23
Section 503. Retroactive Registration.....	24
Section 504. Keeping Registration Current.....	25
Section 505. Failure to Appear for Registration and Absconding.....	26
<b>CHAPTER SIX PUBLIC SEX OFFENDER REGISTRY WEBSITE.....</b>	<b>28</b>
Section 601. Website.....	28
Section 602. Required and Prohibited Information .....	28
Section 603. Community Notification .....	29
<b>CHAPTER SEVEN IMMUNITY .....</b>	<b>31</b>
Section 701. No Waiver of Sovereign Immunity .....	31
<b>CHAPTER EIGHT CRIMES AND CIVIL SANCTIONS .....</b>	<b>32</b>
Section 801. Enforcement of the Code and Criminal Penalties.....	32

**TITLE 6C**  
**TRIBAL SEX OFFENDER REGISTRATION CODE**

**CHAPTER ONE**  
**GENERAL MATTERS**

**Section 101. Title**

This Code shall be known as the Seminole Nation of Oklahoma Tribal Sex Offender Registration Code.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 1.01 to Section 101 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 102. Purpose**

The intent of this Code is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 1.02 to Section 102 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 103. Need**

The Seminole Nation of Oklahoma places great importance on the safety of all citizens located within the territorial jurisdiction geographical boundaries established by the Treaty of March 21, 1866, 14 Stat. 755, entered into by the Seminole Nation of Oklahoma and the United States of America, including but not limited to the following property located within said boundaries; property held in trust by the United States of American on behalf of the Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries, owned in fee by the Seminole Nation of Oklahoma. The Seminole Nation of Oklahoma notes that violent crime in Indian Country is more than twice the national average. On some reservations or in some tribal communities it is twenty times the national average. An astounding thirty percent of Indian and Alaska Native women will be raped in their lifetimes. Tribal nations are disproportionately affected by violent crime and sex offenses in particular from both Indian and non-Indian perpetrators; consequently, the conduct and presence of convicted sex offenders in Indian Country threatens the political integrity, economic security, health and welfare of tribal nations even to the point of imperiling the subsistence of tribal communities.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority

granted by SNC Title 21, § 203; renumbered from Section 1.03 to Section 103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 104. Creation of Registries**

(a) Sex Offender Registry. There is hereby established a sex offender registry or accessing and inputting data through an already existing sex offender registry, which the Seminole Nation of Oklahoma or its designee shall maintain and operate pursuant to the provisions of this Code, or amendments.

(b) Public Sex Offender Registry Website. The Seminole Nation of Oklahoma shall establish a public sex offender registry website, which the Seminole Nation of Oklahoma or its designee shall maintain and operate pursuant to the provisions of this code, as amended.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 1.04 to Section 104 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO**

### **TERMINOLOGY AND COVERED OFFENSES**

#### **Section 201. Definitions**

The Definitions below apply to this Tribal Code only.

(a) Convicted. An adult sex offender is “convicted” for the purposes of this Code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled. A juvenile offender is “convicted” for purposes of this code if the juvenile offender is either:

- (1) Prosecuted and found guilty as an adult for a sex offense; or
- (2) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse as described in either (a) or (b) of section 2241 of title 18, United States Code, or was an attempt or conspiracy to commit such an offense.

(b) Foreign Convictions. A foreign conviction is one obtained outside of the United States.

(c) Employee. The term “employee” as used in this Code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

(d) Immediate. “Immediate” and “immediately” mean within 3 business days.

(e) Imprisonment. The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal “jail.” Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this Code.

(f) Jurisdiction. The term “jurisdiction” as used in this Code refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.

(g) Minor. The term “minor” means an individual who has not attained the age of 18 years.

(h) Resides. The term “reside” or “resides” means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.



(i) Sex Offense. The term “sex offense” as used in this Code includes those offenses contained in 42 U.S.C. § 16911(5) and those offenses enumerated in section 202 of this Code or any other covered offense under applicable tribal law. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(j) Sex Offender. A person convicted of a sex offense is a “sex offender.”

(k) Sexual Act. The term “sexual act” means:

- (1) Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;
- (2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- (4) the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(l) Sexual Contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

(m) Student. A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

(n) SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. § 16911 et. seq., as amended.

(o) Sex Offender Registry. The term “sex offender registry” means the registry of sex offenders, and a notification program, maintained by the Seminole Nation of Oklahoma or its designee.

(p) National Sex Offender Registry (NSOR). The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16919.

(q) SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States

Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

(r) Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.

(s) Tier 1 Sex Offender. A “tier 1 sex offender,” or a “sex offender” designated as “tier 1,” is one that has been convicted of a “tier 1” sex offense as defined in section 301.

(t) Tier 2 Sex Offender. A “tier 2 sex offender,” or a “sex offender” designated as “tier 2,” is one that has been either convicted of a “tier 2” sex offense as defined in section 302, or who is subject to the recidivist provisions of 302.

(u) Tier 3 Sex Offender. A “tier 3 sex offender,” or a “sex offender” designated as “tier 3,” is one that has been either convicted of a “tier 3” sex offense as defined in section 303, or who is subject to the recidivist provisions of 303.

(v) “Seminole Nation” or “Nation” means the Seminole Nation of Oklahoma or a duly appointed designee authorized by the Nation to perform certain duties or receive certain information according to this Code. The designee shall be appointed by a duly authorized tribal resolution on file with the Nation, the SMART Office and the Seminole Nation of Oklahoma Tribal Court or the appropriate CFR Court.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 2.01 to Section 201 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 202. Covered Offenses**

Individuals who reside on property owned by the Nation in fee, trust or restricted allotted lands regardless of location, are employed within on property owned by the Nation in fee, trust or restricted allotted status regardless of location, or who attend school on property owned by the Nation in fee, trust or restricted allotted status regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this code:

(a) Tribal offenses as set forth in the Seminole Nation of Oklahoma Criminal Code if applicable.

(b) Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. § 16911(5):

- (1) 18 U.S.C. § 1591 (sex trafficking of children),
- (2) 18 U.S.C. § 1801 (video voyeurism of a minor),
- (3) 18 U.S.C. § 2241 (aggravated sexual abuse),

- (4) 18 U.S.C. § 2242 (sexual abuse),
- (5) 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
- (6) 18 U.S.C. § 2244 (abusive sexual contact),
- (7) 18 U.S.C. § 2245 (offenses resulting in death),
- (8) 18 U.S.C. § 2251 (sexual exploitation of children),
- (9) 18 U.S.C. § 2251A (selling or buying of children),
- (10) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor),
- (11) 18 U.S.C. § 2252A (material containing child pornography),
- (12) 18 U.S.C. § 2252B (misleading domain names on the internet),
- (13) 18 U.S.C. § 2252C (misleading words or digital images on the internet),
- (14) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the U.S.),
- (15) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity),
- (16) 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity),
- (17) 18 U.S.C. § 2423 (Mann Act),
- (18) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),
- (19) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

(c) Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

(d) Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951).

(e) Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse as codified in 18 U.S.C. § 2241 and committed by a minor who is 14 years of age

or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

(f) Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including the Seminole Nation of Oklahoma's tribal jurisdictional boundaries, that involves:

- (1) Any type or degree of genital, oral, or anal penetration,
- (2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
- (3) Kidnapping of a minor,
- (4) False imprisonment of a minor,
- (5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
- (6) Use of a minor in a sexual performance,
- (7) Solicitation of a minor to practice prostitution,
- (8) Receipt, possession, production, or distribution of child pornography,
- (9) Criminal sexual conduct that involves physical contact with a minor, or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
- (10) Any conduct that by its nature is a sex offense against a minor, or
- (11) Any offense similar to those outlined in:
  - (A) 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion),
  - (B) 18 U.S.C. § 1801 (video voyeurism of a minor),
  - (C) 18 U.S.C. § 2241 (aggravated sexual abuse),
  - (D) 18 U.S.C. § 2242 (sexual abuse),
  - (E) 18 U.S.C. § 2244 (abusive sexual contact),
  - (F) 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution), or

(G) 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).

(g) Except as limited by subparagraph 6 or 7, the term “sex offense” means:

- (1) A criminal offense that has an element involving a sexual act or sexual contact with another;
- (2) A criminal offense that is a specified offense against a minor. The term “specified offense against a minor” means an offense against a minor that involves any of the following:
  - (A) An offense, unless committed by a parent or guardian, involving kidnapping.
  - (B) An offense, unless committed by a parent or guardian, involving false imprisonment.
  - (C) Solicitation to engage in sexual conduct.
  - (D) Use in a sexual performance.
  - (E) Solicitation to practice prostitution.
  - (F) Video voyeurism as described in 18 U.S.C. § 1801.
  - (G) Possession, production, or distribution of child pornography.
  - (H) Criminal sexual conduct involving a minor, or the use of the internet to facilitate or attempt such conduct.
  - (I) Any conduct that by its nature is a sex offense against a minor;
- (3) A Federal offense, including an offense prosecuted under sections 1152 or 1153 of Title 18 of the United States Code, under section 1591, or chapter 109A, 110, other than section 2257, 2257A, or 2258, or 117 of Title 18 of the United States Code;
- (4) A military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951); or
- (5) An attempt or conspiracy to commit an offense described in clauses (1) through (4).
- (6) Offenses involving Consensual Sexual Conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at

least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

- (7) Foreign Offenses. A foreign conviction is not a sex offense for the purposes of this Code unless it was either:
  - (A) obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or
  - (B) under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 2.02 to Section 202 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE TIERED OFFENSES**

### **Section 301. Tier 1 Offenses**

(a) Sex Offenses. A Tier 1 offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense that is not a Tier 2 or Tier 3 offense.

(b) Offenses Involving Minors. A Tier 1 offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 202(c) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

(c) Tribal Offenses. Any sex offense covered by this Act shall be tiered according to the elements of conviction as those elements compare to the federal crimes for Tier 1 classification as opposed to the length of sentencing as the Indian Civil Rights Act restricts tribal maximum sentencing authority to one year.

(d) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a Tier 1 offense:

- (1) 18 U.S.C. § 1801 (video voyeurism of a minor),
- (2) 18 U.S.C. § 2252 (receipt or possession of child pornography),
- (3) 18 U.S.C. § 2252A (receipt or possession of child pornography),
- (4) 18 U.S.C. § 2252B (misleading domain names on the internet),
- (5) 18 U.S.C. § 2252C (misleading words or digital images on the internet),
- (6) 18 U.S.C. § 2422(a) (coercion to engage in prostitution),
- (7) 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct),
- (8) 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places),
- (9) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),  
or
- (10) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

(e) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 301(a), (b), or (c) shall be considered a Tier 1 offense.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 3.01 to Section 301 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 302. Tier 2 Offenses**

(a) Recidivism and Felonies. Unless otherwise covered by Section 303, any sex offense that is not the first sex offense for which a person has been convicted and involves the activities set forth in Sections (b), (c) and (d) of this part is considered a Tier 2 offense.

(b) Offenses Involving Minors. A Tier 2 offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

- (1) The use of minors in prostitution, including solicitations,
- (2) Enticing a minor to engage in criminal sexual activity,
- (3) Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body,
- (4) The use of a minor in a sexual performance, or
- (5) The production or distribution of child pornography.

(c) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a Tier 2 offense:

- (1) 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion),
- (2) 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
- (3) 18 U.S.C. § 2244 (abusive sexual contact, where the victim is 13 years of age or older),
- (4) 18 U.S.C. § 2251 (sexual exploitation of children),
- (5) 18 U.S.C. § 2251A (selling or buying of children),
- (6) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor including, but not limited to, receipt, possession, production or distribution of child pornography),
- (7) 18 U.S.C. § 2252A (production or distribution of material containing child pornography),



- (8) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States),
- (9) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity),
- (10) 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution),
- (11) 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).

(d) **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 302(a), (b), or (c) shall be considered a Tier 2 offense.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 3.02 to Section 302 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 303. Tier 3 Offenses**

(a) **Recidivism and Felonies.** Any sex offense where the offender has at least one prior conviction for a Tier 2 sex offense, or has previously become a Tier 2 sex offender, is a Tier 3 offense.

(b) **General Offenses.** A Tier 3 offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

- (1) Non-parental kidnapping of a minor,
- (2) A sexual act with another by force or threat,
- (3) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
- (4) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

(c) **Certain Federal Offenses.** Conviction for any of the following federal offenses shall be considered conviction for a Tier 3 offense:

- (1) 18 U.S.C. § 2241 (aggravated sexual abuse),
- (2) 18 U.S.C. § 2242 (sexual abuse), or
- (3) Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).

(d) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 303(a), (b), or (c) shall be considered a Tier 3 offense.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 3.03 to Section 303 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FOUR REQUIRED INFORMATION**

### **Section 401. General Requirements**

(a) Duties. A sex offender covered by this Code who is required to register with the Seminole Nation of Oklahoma pursuant to chapter 5 shall provide all of the information detailed in this chapter to the Seminole Nation of Oklahoma or its designee, and the Seminole Nation of Oklahoma or its designee shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register with the Nation in accordance with this Code and shall implement any relevant policies and procedures.

(b) Digitization. All information obtained under this Code shall be, at a minimum, maintained by the Seminole Nation of Oklahoma or its designee in a digitized format.

(c) Electronic Database. A sex offender registry shall be maintained in an electronic database by the Seminole Nation of Oklahoma or its designee and shall be in a form capable of electronic transmission.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.01 to Section 401 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 402. Criminal History**

(a) Criminal History. The Seminole Nation of Oklahoma or its or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

- (1) The date of all arrests,
- (2) The date of all convictions,
- (3) The sex offender's status of parole, probation, or supervised release,
- (4) The sex offender's registration status, and
- (5) Any outstanding arrest warrants.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.02 to Section 402 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 403. Date of Birth**

(a) Date of Birth. The Seminole Nation of Oklahoma or its or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

- (1) The sex offender's actual date of birth, and
- (2) Any other date of birth used by the sex offender.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.03 to Section 403 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 404. DNA Sample**

(a) DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Seminole Nation of Oklahoma or its designee a sample of the offender's DNA.

(b) CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile into CODIS.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.04 to Section 404 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 405. Driver's Licenses, Identification Cards, Passports, and Immigration Documents**

(a) Driver's License. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.

(b) Identification Cards. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card or Certified Degree of Indian Blood (CDIB) card issued by any jurisdiction.

(c) Passports. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

(d) Immigration Documents. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.05 to Section 405 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 406. Employment Information**

(a) Employment. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions, apprentices, internships, externships and any capacity of the like:

- (1) The name of the sex offender's employer,
- (2) The address of the sex offender's employer, and
- (3) Similar information related to any transient or day labor employment.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.06 to Section 406 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 407. Finger and Palm Prints**

(a) Finger and Palm Prints. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, both fingerprints and palm prints of the sex offender in a digitized format.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.07 to Section 407 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 408. Internet Identifiers**

(a) Internet Names. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

- (1) Any and all email addresses used by the sex offender,
- (2) Any and all Instant Message addresses and identifiers,
- (3) Any and all other designations or monikers used for self-identification in internet communications or postings, and

- (4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.08 to Section 408 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 409. Name**

(a) Name. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

- (1) The sex offender's full primary given name,
- (2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
- (3) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.09 to Section 409 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 410. Phone Numbers**

(a) Phone Numbers. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

- (1) Any and all land line telephone numbers, and
- (2) Any and all cellular telephone numbers.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.10 to Section 410 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 411. Picture**

(a) Photograph. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.

(b) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

- (1) Every 90 days for Tier 3 sex offenders,
- (2) Every 180 days for Tier 2 sex offenders, and
- (3) Every year for Tier 1 sex offenders.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.11 to Section 411 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 412. Physical Description**

(a) Physical Description. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

- (1) A physical description,
- (2) A general description of the sex offender's physical appearance or characteristics, and
- (3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.12 to Section 412 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 413. Professional Licensing Information**

The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.13 to Section 413 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 414. Residence Address**

(a) Address. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence or locations at which the sex offender may be regularly or habitually located:

- (1) The address of each residence at which the sex offender resides or will reside, and
- (2) Any location or description that identifies where the sex offender is physically present for more than 3 days regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.14 to Section 414 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 415. School**

(a) School Location. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

- (1) The address of each school at which the sex offender is or will be a student, and
- (2) The name of each school at which the sex offender is or will be a student.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.15 to Section 415 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 416. Social Security Number**

(a) Social Security. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information:

- (1) A valid social security number for the sex offender, and
- (2) Any social security number the sex offender has used in the past, valid or otherwise.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority



granted by SNC Title 21, § 203; renumbered from Section 4.16 to Section 416 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 417. Temporary Lodging**

(a) Lodging Information. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for 7 days or more:

- (1) Identifying information of the temporary lodging locations including addresses and names, and
- (2) The dates the sex offender will be staying at each temporary lodging location.

(b) Travel Abroad. In the event the sex offender will be traveling outside of the United States for more than 7 days, the Seminole Nation of Oklahoma or its designee shall immediately provide this information to INTERPOL.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.17 to Section 417 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 418. Offense Information**

Offense Information. The Seminole Nation of Oklahoma or its designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.18 to Section 418 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 419. Vehicle Information**

(a) Detailed Information. The Seminole Nation of Oklahoma or its designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

- (1) License plate numbers,
- (2) Registration numbers or identifiers,
- (3) General description of the vehicle to include color, make, model, and year, and

- (4) Any permanent or frequent location where any covered vehicle is kept.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.19 to Section 419 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 420. Frequency, Duration and Reduction**

(a) Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Seminole Nation of Oklahoma or a designee's place for purposes of verification and keeping their registration current in accordance with the following time frames:

- (1) For Tier 1 offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
- (2) For Tier 2 offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
- (3) For Tier 3 offenders, once every 90 days for the rest of their lives.

(b) Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:

- (1) A Tier 1 offender may have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years;
- (2) A Tier 2 or Tier 3 offender shall never have the opportunity to reduce the registration periods.

(c) Clean Record. For purposes of section 420(b) a person has a clean record if:

- (1) He or she has not been convicted of any offense subsequent to the offense requiring registration with this Act; and
- (2) He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and
- (3) He or she has successfully completed an appropriate sex offender treatment program certified by the Nation, another jurisdiction, or by the Attorney General of the United States.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority

granted by SNC Title 21, § 203; renumbered from Section 4.20 to Section 420 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 421. Requirements for In Person Appearances**

(a) Photographs. At each in-person verification, the sex offender shall permit the Seminole Nation of Oklahoma or its designee to take a photograph of the offender.

(b) Review of Information. At each in-person verification the sex offender shall review existing information for accuracy.

(c) Notification. If any new information or change in information is obtained at an in-person verification, the Seminole Nation of Oklahoma or its designee shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 4.21 to Section 421 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FIVE REGISTRATION**

### **Section 501. Where Registration is Required**

(a) Jurisdiction of Conviction. A sex offender must initially register with the Seminole Nation of Oklahoma or its designee if the sex offender was convicted by the Seminole Nation of Oklahoma Tribal Court or the CFR Court of a covered sex offense regardless of the sex offender's actual or intended residency.

(b) Jurisdiction of Incarceration. A sex offender must register with the Seminole Nation of Oklahoma or its designee if the sex offender is incarcerated by the Nation while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

(c) Jurisdiction of Residence. A sex offender must register with Seminole Nation of Oklahoma or its designee if the sex offender resides on lands owned by the Seminole Nation of Oklahoma in fee, trust or restricted allotted status.

(d) Jurisdiction of Employment. A sex offender must register with the Seminole Nation of Oklahoma or its designee if he or she is employed by the Nation in any capacity or otherwise is employed for the Seminole Nation of Oklahoma or any of the Nation's businesses, enterprises, entities or tribal service agencies.

(e) Jurisdiction of School Attendance. A sex offender must register with the Seminole Nation of Oklahoma or its designee if the sex offender is a student in any capacity on lands owned by the Nation in fee, trust or restricted allotment status or on lands whereby the Seminole Nation of Oklahoma maintains tribal service agencies.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 5.01 to Section 501 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 502. Timing of Registration**

(a) Timing. A sex offender required to register with the Nation under this code shall do so in the following timeframe:

- (1) If convicted by Seminole Nation of Oklahoma Tribal Court or the CFR Court utilizing this Code for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration;
- (2) If convicted by the Seminole Nation of Oklahoma Tribal Court or CFR Court utilizing this Code but not incarcerated, within 3 business days of sentencing for the registration offense, and

- (3) Within 3 business days of establishing a residence, commencing employment, or becoming a student in any capacity on lands owned by the Nation in fee, trust or restricted allotment status or on lands whereby the Seminole Nation of Oklahoma maintains tribal service agencies, a sex offender must appear in person to register with Seminole Nation of Oklahoma or its designee.

(b) Duties of the Seminole Nation of Oklahoma or its designee. The Seminole Nation of Oklahoma shall have policies and procedures in place to ensure the following:

- (1) That any sex offender incarcerated or sentenced by the Nation for a covered sex offense completes their initial registration with the Nation,
- (2) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,
- (3) That the sex offender is registered, and
- (4) That upon entry of the sex offender's information in to the registry that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status. Such information shall also be immediately uploaded to the Nation's public sex offender registry website.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 5.02 to Section 502 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 503. Retroactive Registration**

(a) Retroactive Registration. The Seminole Nation of Oklahoma shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this Code:

- (1) Sex offenders incarcerated or under the supervision of the Nation or the CFR Court utilizing this Code, whether for a covered sex offense or other crime,
- (2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Nation's laws, and
- (3) Sex offenders reentering the justice system due to conviction for any crime.

(b) **Timing of Recapture.** The Seminole Nation of Oklahoma or its designee shall ensure recapture of the sex offenders mentioned in Section 503(a) within the following timeframe to be calculated from the date of passage of this code:

1. For Tier 1 sex offenders, 1 year,
2. For Tier 2 sex offenders, 180 days, and
3. For Tier 3 sex offenders, 90 days.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 504. Keeping Registration Current**

(a) **Jurisdiction of Residency.** All sex offenders required to register in this jurisdiction shall immediately appear in person at the Seminole Nation of Oklahoma or its designee to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform the Seminole Nation of Oklahoma or its designee via telephonically or by email of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, the sex offender and the Seminole Nation of Oklahoma or its designee shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

(b) **Jurisdiction of School Attendance.** Any sex offender who is a student in any capacity on lands owned by the Nation in fee, trust or restricted allotted status or located on lands where the tribal service agencies or located who changes their school, or otherwise terminates their schooling, shall immediately appear in person at Seminole Nation of Oklahoma or its designee to update that information. The Seminole Nation of Oklahoma or its designee shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

(c) **Jurisdiction of Employment.** Any sex offender who is employed by the Nation in any capacity or otherwise is employed by the Seminole Nation of Oklahoma or its businesses, enterprises, entities or tribal service agencies, that change their employment, or otherwise terminate their employment, shall immediately appear in person at the Seminole Nation of Oklahoma or its designee to update that information. The Seminole Nation of Oklahoma or its designee shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

(d) **Duties of the Seminole Nation of Oklahoma or its Designee.** With regard to changes in a sex offender's registration information, the Seminole Nation of Oklahoma or its designee shall immediately notify:

- (1) All jurisdictions where a sex offender intends to reside, work, or attend school,
- (2) Any jurisdiction where the sex offender is either registered or required to register, and
- (3) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Seminole Nation of Oklahoma Tribal Law Enforcement or designee shall also ensure this information is immediately updated on NSOR.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 5.04 to Section 504 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 505. Failure to Appear for Registration and Absconding**

(a) Failure to Appear. In the event a sex offender fails to register with the Nation as required by this Code, the Seminole Nation of Oklahoma or its designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Nation that the sex offender failed to appear for registration.

(b) Absconded Sex Offenders. If the Seminole Nation of Oklahoma or its designee receives information that a sex offender has absconded, the Seminole Nation of Oklahoma or its designee shall make an effort to determine if the sex offender has actually absconded.

- (1) In the event no determination can be made, the Seminole Nation of Oklahoma or its designee shall ensure the Seminole Nation of Oklahoma Tribal Law Enforcement or designee and any other appropriate law enforcement agency is notified.
- (2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
- (3) If an absconded sex offender cannot be located, the Seminole Nation of Oklahoma Tribal Law Enforcement or designee shall take the following steps:
  - (A) Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,
  - (B) Notify the U.S. Marshals Service,

- (C) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
- (D) Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and
- (E) Enter the sex offender into the National Crime Information Center Wanted Person File.

(c) Failure to Register. In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this Code, the Seminole Nation of Oklahoma or designee shall take all appropriate follow-up measures including those outlined in Section 505(b). The Seminole Nation of Oklahoma or designee shall first make an effort to determine if the sex offender is actually employed or attending school on lands that the Nation owns in trust, fee or restricted allotted status or in tribal service agency areas.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 5.05 to Section 505 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **CHAPTER SIX**

### **PUBLIC SEX OFFENDER REGISTRY WEBSITE**

#### **Section 601. Website**

- (a) Website. The Seminole Nation of Oklahoma or its designee shall use and maintain a public sex offender registry website.
- (b) Links. The registry website shall include links to sex offender safety and education resources.
- (c) Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- (d) Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
- (e) Search Capabilities. The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.
- (f) Dru Sjodin National Sex Offender Public Website. The Nation shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 6.01 to Section 601 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 602. Required and Prohibited Information**

- (a) Required Information. The following information shall be made available to the public on the sex offender registry website:
  - (1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
  - (2) All sex offenses for which the sex offender has been convicted,
  - (3) The sex offense(s) for which the offender is currently registered,
  - (4) The address of the sex offender's employer(s),
  - (5) The name of the sex offender including all aliases,
  - (6) A current photograph of the sex offender,

- (7) A physical description of the sex offender,
- (8) The residential address and, if relevant, a description of a habitual residence of the sex offender,
- (9) All addresses of schools attended by the sex offender, and
- (10) The sex offender's vehicle license plate number along with a description of the vehicle.

(b) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

- (1) Any arrest that did not result in conviction,
- (2) The sex offender's social security number,
- (3) Any travel and immigration documents,
- (4) The identity of the victim, and
- (5) Internet identifiers (as defined in 42 U.S.C. § 16911).

(c) Witness Protection. For sex offenders who are under a witness protection program, the Seminole Nation of Oklahoma may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 6.05 to Section 602 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 603. Community Notification**

(a) Law Enforcement Notification. Whenever a sex offender registers or updates his or her information with the Nation, the Seminole Nation of Oklahoma or designee shall:

- (1) Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases,
- (2) Immediately notify any agency, department, or program within the Nation that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal/CFR prosecutors, and tribal/CFR probation.

- (3) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.
- (4) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a) when a sex offender registers or updates registration.

(b) Community Notification. The Seminole Nation of Oklahoma or its designee shall ensure there is an automated community notification process in place that ensures the following:

- (1) Upon a sex offender's registration or update of information with the Nation, the Nation's public sex offender registry website is immediately updated,
- (2) The Nation's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance within the Nation, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 6.03 to Section 603 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER SEVEN IMMUNITY**

### **Section 701. No Waiver of Sovereign Immunity**

(a) No waiver of immunity. Nothing under this chapter shall be construed as a waiver of sovereign immunity for the Seminole Nation of Oklahoma or its departments, agencies, employees, or agents.

(b) Good faith. Any person acting under good faith of this Code shall be immune from any civil liability arising out of such actions.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 7.01 to Section 701 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**CHAPTER EIGHT**  
**CRIMES AND CIVIL SANCTIONS**

**Section 801. Enforcement of the Code and Criminal Penalties**

Each violation of a provision of this Code by a sex offender shall be considered a crime and subject to a period of incarceration of up to 1 year and a fine of up to \$5,000.

[HISTORY: Enacted by TO 2009-02, June 5, 2010; approved by BIA February 2, 2012; recodified from Title 6A to Title 6C on May 26, 2016 pursuant to authority granted by SNC Title 21, § 203; renumbered from Section 8.0 to Section 801 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 7**  
**CRIMINAL PROCEDURE CODE**  
**INDEX**

<b>TITLE 7 CRIMINAL PROCEDURE CODE INDEX.....</b>	<b>i</b>
<b>TITLE 7 CRIMINAL PROCEDURE CODE .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>1</b>
Section 1. Scope, Purpose and Construction.....	1
<b>CHAPTER ONE PRELIMINARY PROVISIONS.....</b>	<b>2</b>
Section 101. Prosecution of Offenses .....	2
Section 102. Rights of Defendant.....	2
Section 103. Limitation of Prosecution .....	4
Section 104. No Common Law Offenses .....	4
<b>CHAPTER TWO PROCEEDINGS BEFORE TRIAL .....</b>	<b>5</b>
Section 201. The Complaint.....	5
Section 202. Arrest Warrant or Summons to Appear .....	6
Section 203. Criminal Citations .....	7
Section 204. Arraignment .....	8
Section 205. Commitments .....	9
Section 206. Joinder .....	10
Section 207. Pleas.....	10
Section 208. Withdrawing Guilty Plea .....	10
Section 209. Plea Bargaining .....	11
Section 210. Pleading and Motions Before Trial: Defenses and Objections .....	11
Section 211. Concurrent Trial of Defendant or Charges .....	12
Section 212. Discovery and Inspection .....	12
Section 213. Subpoena.....	12
<b>CHAPTER THREE TRIAL .....</b>	<b>14</b>
Section 301. Trial by Jury or by the District Court .....	14
Section 302. Trial Jurors.....	14
Section 303. Order of Trial .....	15
Section 304. Trial by Judicial Panel .....	16
Section 305. Judge Disability.....	17
Section 306. Evidence .....	17
Section 307. Expert Witnesses and Interpreters.....	17

Section 308.	Motion for Judgment of Acquittal.....	18
Section 309.	Jury Instructions .....	18
Section 310.	Verdict .....	18
<b>CHAPTER FOUR JUDGMENT AND SENTENCE .....</b>		<b>20</b>
Section 401.	Judgment.....	20
Section 402.	Sentence .....	20
Section 403.	General Sentencing Provisions .....	20
Section 404.	New Trial .....	21
Section 405.	Arrest of Judgment .....	22
Section 406.	Correction or Reduction of Sentence.....	22
Section 407.	Clerical Mistakes .....	22
<b>CHAPTER FIVE APPEAL .....</b>		<b>23</b>
Section 501.	Right of Appeal; How Taken .....	23
Section 502.	Stay of Judgment and Relief Pending Review .....	23
<b>CHAPTER SIX OTHER PROVISIONS.....</b>		<b>25</b>
Section 601.	Search and Seizure .....	25
Section 602.	Arrest .....	27
Section 603.	Arrest in Hot Pursuit.....	28
Section 604.	Limitation on Arrests in the Home.....	28
Section 605.	Notification of Rights .....	29
Section 606.	Executive Order for Relief from Judgment.....	30
Section 607.	Arrest in Cases of Domestic Abuse.....	30
<b>CHAPTER SEVEN BAIL.....</b>		<b>32</b>
Section 701.	Release in Nonbanishment Cases Prior to Trial.....	32
Section 702.	Appeal from Conditions of Release .....	33
Section 703.	Release in Banishment Cases or After Conviction.....	34
Section 704.	Penalties for Failure to Appear .....	34
Section 705.	Person or Classes Prohibited as Bondsmen .....	34
Section 706.	Authority to Act as Bail Bondsmen.....	35
<b>CHAPTER EIGHT INTENSIVE SUPERVISION &amp; PROBATION.....</b>		<b>36</b>
Section 801.	Intensive Supervision Program – Probation Department Policy and Procedures	36
Section 802.	Appointment of Probation Officers .....	37
Section 803.	Duties and Powers of Probation Officers .....	37
Section 804.	Suspension of Sentence and Probation .....	37

Section 805.	Period of Suspension or Probation; Modification .....	39
Section 806.	Violation of Terms of Suspension or Probation.....	39
Section 807.	Order Removing Disqualification or Disability Based on Conviction.....	40
Section 808.	Final Judgment.....	40
Section 809.	Trials – Suspension of Sentence – Probation.....	41
Section 810.	Probation Officers .....	41
<b>CHAPTER NINE GRAND JURY .....</b>		<b>43</b>
Section 901.	Calling the Grand Jury.....	43
Section 902.	Term of the Grand Jury .....	43
Section 903.	Selection and Qualifications of Jurors.....	43
Section 904.	Grand Jury Defined .....	43
Section 905.	Challenge of Grand Jury .....	43
Section 906.	Grounds for Challenge to Panel .....	44
Section 907.	Jury Discharged if Challenge Allowed.....	44
Section 908.	Grounds for Challenge to Juror.....	44
Section 909.	Challenge May be Oral or Written – How Adjudicated .....	45
Section 910.	Ruling on Challenge .....	45
Section 911.	Effect of Challenge Allowed .....	45
Section 912.	Violation, Where Challenge Allowed .....	45
Section 913.	Challenge to be Made Before Jury is Sworn – Exception .....	45
Section 914.	New Grand Jury in Certain Cases .....	46
Section 915.	Special Grand Jury .....	46
Section 916.	District Court to Appoint Foreman .....	46
Section 917.	Oath to Foreman.....	46
Section 918.	Oath to Other Grand Jurors.....	47
Section 919.	Reserved .....	47
Section 920.	Charge to Grand Jury.....	47
Section 921.	Jury to Retire .....	47
Section 922.	Grand Jury Must Appoint Clerk.....	48
Section 923.	Discharge of Grand Juror.....	48
Section 924.	Discharge of Grand Jury .....	48
Section 925.	General Powers and Duties of Grand Jury .....	48
Section 926.	Foreman to Swear Witness .....	49
Section 927.	Evidence Before Grand Jury .....	49



Section 928.	Hearsay Inadmissible.....	49
Section 929.	Evidence for the Accused – Procuring Additional Evidence.....	49
Section 930.	Indictment to be Found When.....	49
Section 931.	Members to Give Evidence.....	49
Section 932.	Subjects for Inquiry by Grand Jury .....	50
Section 933.	Access to Prisons and Records.....	50
Section 934.	Advice of District Court or Prosecuting Attorney – Who May Be Present ...	50
Section 935.	Proceedings Kept Secret .....	51
Section 936.	Juror May Disclose Proceedings, When.....	51
Section 937.	Privilege of Grand Juror .....	51
Section 938.	Interpreter – Appointment – Compensation .....	51
Section 939.	Restriction on Sessions Before and After Elections.....	51
Section 940.	Reports of Investigations of Public Offices or Institutions .....	52

**TITLE 7**  
**CRIMINAL PROCEDURE CODE**  
**INTRODUCTION**

**Section 1.     Scope, Purpose and Construction**

(a)       This Title governs the procedure in all criminal proceedings in the District Court and all preliminary or supplementary procedures as specified herein.

(b)       Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.

(c)       This Title is intended to provide for the just determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.

(d)       In any case wherein no particular procedure is provided herein, resort shall be had to the Civil Procedure Code or other applicable trial law subject always to the rights of the Defendant. If no procedure is provided in this Title, the Civil Procedure Code, or other applicable law, the District Court may proceed in any lawful fashion while protecting the rights of the Defendant.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER ONE**

### **PRELIMINARY PROVISIONS**

#### **Section 101. Prosecution of Offenses**

(a) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open court, by a court of competent jurisdiction. Provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this Title shall be deemed punishment.

(b) All criminal proceedings shall be prosecuted in the name of the Nation as the Plaintiff, against the person charged with an offense, referred to as the Defendant.

(c) The case number prefix assigned to criminal actions shall be unique from the prefix assigned to other types of cases in order to clearly distinguish them.

[HISTORY: Ordinance No. 2009-03, December 5, 2009; Approved by BIA  
February 2, 2012]

#### **Section 102. Rights of Defendant**

In any criminal proceeding, every Defendant shall have the following rights:

- (a) To those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302.
- (b) To effective assistance of counsel at least equal to that guaranteed by the United States Constitution.
- (c) To a presiding judge who shall:
  - (1) have sufficient legal training to preside over criminal proceedings; and
  - (2) be licensed to practice law by any jurisdiction in the United States, including the tribes.
- (d) To an impartial jury drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.
- (e) To appear and defend in person or by counsel except:
  - (1) Trial of traffic or hunting and fishing offenses not resulting in injury to any person, nor committed while using alcohol or non-prescription drugs may be prosecuted without the presence of the Defendant upon a showing that the Defendant received actual notice of five (5) days prior to the proceeding, if no imprisonment is ordered, and any fine imposed does not exceed fifty dollars (\$50.00).

- (2) The Defendant may represent himself, or be represented by an adult enrolled member of the nation with leave of the District Court if such representation is without charge to the Defendant, or by any attorney or advocate admitted to practice before the District Court.
  - (3) The Seminole Nation shall provide any indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States, including tribes, provided that jurisdiction applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- (f) To be informed of the nature of the charges against him and to have a written copy thereof;
- (g) To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a Defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to testify in that immediate criminal proceeding. He shall not, however, be deemed to have waived his right to remain silent in other distinct phases of the criminal trial process.
- (h) To confront and cross examine all witnesses against him, subject to the Evidence Code.
- (i) To compel by subpoena the attendance of witnesses in his own behalf;
- (j) To have a speedy public trial by an impartial judge or jury as provided in this Title;
- (k) To appeal in all cases;
- (l) To prevent his present or former spouse from testifying against him concerning any matter which occurred during such marriage, except;
- (1) In any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the Defendant, or against the marital relationship;
  - (2) Any testimony by the spouse in the Defendant's behalf will be deemed a waiver of this privilege.
- (m) Not to be twice put in jeopardy by the Nation for the same offense;
- (n) To a record of the criminal proceeding, including audio or other recording of the trial proceeding;
- (o) To file a petition for writ of habeas corpus in the United States' federal court pursuant to 25 U.S.C. § 1303 and a petition to stay further detention pursuant to 25 U.S.C. § 1304(e).

- (1) Every defendant who has been detained in jail by the Seminole Nation shall be notified of this right and any additional rights and privileges they are entitled to under 25 U.S.C. § 1304(e).

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2015-02, June 6, 2015; effective July 6, 2015.]

### **Section 103. Limitation of Prosecution**

(a) Every criminal proceeding except an offense for which banishment is a possible punishment shall be commenced within three (3) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred. Every criminal offense for which banishment is a possible punishment shall be commenced within seven (7) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred.

(b) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be completed.

(c) The date of “diligent discovery” is the date at which, in the exercise of reasonable diligence, some person other than the Defendant and his co-conspirator(s) know or should have known that an offense had been committed.

(d) Time spent outside the Nation’s jurisdiction for the purpose of avoiding prosecution shall not be counted toward the limitation period to begin prosecution.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 104. No Common Law Offenses**

No act or failure to act shall be subject to criminal prosecution unless made an offense by some statute of the Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

## **CHAPTER TWO**

### **PROCEEDINGS BEFORE TRIAL**

#### **Section 201. The Complaint**

(a) Complaint. Every criminal proceeding shall be commenced by the filing of a criminal Complaint. The Complaint is a sworn written statement of the essential fact charging that a named individual(s) has committed a particular offense.

(b) Contents of Complaint. The Complaint shall contain:

- (1) The name and address of the District Court;
- (2) The name of the Defendant; if known or some other name if not known plus whatever description of the Defendant is known;
- (3) The signature of the Prosecuting Attorney or their Assistant; and their typewritten name.
- (4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated;
- (5) The person against whom or against whose property the offense was committed and the names of the witnesses of the Nation if known, otherwise no statement need be made;
- (6) The general name and Code title and section number of the alleged offense.
- (7) If the offense(s) is punishable by banishment, the Prosecuting Attorney may state in the Complaint or an Amendment of the Complaint that banishment will be recommended as a punishment if the Defendant is convicted. If such statement is not made in the Complaint or in an Amendment of the Complaint, banishment may not be imposed as a penalty.

(c) Error. No minor omission from or error in the form of the Complaint shall be grounds for dismissal of the case unless some significant prejudice against the Defendant can be shown to result there from.

(d) Time of filing Complaint. A Complaint may be filed at any time within the period prescribed by Section 103 of this Title, provided, that if an accused has been arrested without a warrant the Complaint shall be filed promptly and in case no later than the time of Arraignment.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 202. Arrest Warrant or Summons to Appear**

(a) If it appears from the Complaint that an offense has been charged against the Defendant, a judge of the District Court shall issue a summons to the Defendant to bring him before the District Court. An arrest warrant shall issue only upon a Complaint charging an offense by the Defendant against the law of the Nation supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the Defendant committed it.

(b) Issuance of Arrest Warrants or Summons. Unless the District Court Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the Complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(c) Contents of Arrest Warrants. The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the District Court; the name of the Defendant, or if the correct name is unknown, any name by which the Defendant is known and the Defendant's description; and, a description of the offense charged with a reference to the Section of the Tribal Code alleged to have been violated. It shall order and command the Defendant be arrested and brought before a Judge of the District Court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

(d) Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the Defendant to appear before a District Court Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the Defendant's failure to appear an arrest warrant shall issue and that the Defendant may be further charged with disobeying a lawful order of the District Court. If the Defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

(e) Service of Arrest Warrants and Summons.

- (1) Warrants for Arrest and Criminal Summons may be served by any Seminole Nation Lighthorse Police Officer or Federal law enforcement officer or any adult person authorized in writing by a Judge of the District Court. Service may be made at any place within the jurisdiction of the Nation.
- (2) Warrants of Arrest and Summons are to be served at a person's home only between the hours of 7:00 am and 9:00 pm, unless an authorization to serve such process at night is placed on the face thereof by a Judge of the District Court.

- (3) The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the District Court. A copy, so signed, shall be given to the person served or arrested at the time of arrests if reasonably possible, or as soon thereafter as is reasonable possible.
- (4) An officer need not have the warrant in his possession at the time of arrest, but if not, he shall inform the Defendant of the charge, that a warrant of arrest has been issued and shall provide the Defendant a copy of the warrant not later than twenty four (24) hours after arrest or the time of arraignment, whichever is sooner.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 203. Criminal Citations**

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his direction, issue the Defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a District Court order, and may be filed in the action in lieu of a formal Complaint, unless the District Court orders that formal Complaint be filed.

(b) **Contents of Citation.**

- (1) The citation shall contain the name and address of the District Court, the name or alias and description of the Defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
- (2) The citation shall contain an agreement by the Defendant to appear before a District Court Judge within five (5) days or on a day certain to answer to the charge, and the signature of the Defendant.
- (3) The citation shall contain a notice that upon the Defendant's failure to appear, an arrest warrant shall issue and that the Defendant may be further charged with disobeying a lawful order of the District Court.
- (4) One (1) copy of the citation shall be given to the Defendant and two (2) copies shall be delivered to the Prosecuting Attorney.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]



## **Section 204. Arraignment**

(a) Arraignment Defined. Arraignment is the bringing of an accused person before the District Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(b) Procedure at Arraignment. Arraignments shall be conducted in the following order:

- (1) The Judge should request the Prosecuting Attorney to read the charges.
- (2) The Prosecuting Attorney should read the entire Complaint, deliver a copy to the Defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.
- (3) The Judge should determine that the accused understands the charge against him and explain to the Defendant that he has the following rights:
  - (A) the right to remain silent.
  - (B) the right to be informed of the charges against him.
  - (C) the right to counsel and the right to a reasonable continuance to obtain counsel. If the defendant cannot afford counsel, one will be appointed for them at the expense of the Seminole Nation.
  - (D) the right to have the Court compel the witnesses against him to appear and testify.
  - (E) the right to cross-examine and question witnesses against him.
  - (F) the right to call witnesses in his own behalf and to have the Court issue subpoenas within its jurisdictional limits notifying the witness to appear.
  - (G) the right to a speedy and public trial.
  - (H) the right to a jury trial.
  - (I) at trial, the right to testify or not to testify in his own behalf, because he has the privilege against self-incrimination.
  - (J) if found guilty, the right to appeal.
  - (K) To file a petition for writ of habeas corpus in the United States' federal court pursuant to 25 U.S.C. § 1303 and a petition to stay further detention pursuant to 25 U.S.C. § 1304(e).

- (L) the right to be released on bail or on his own recognizance pending trial.

the reading of any or all these rights may be waived by a defendant represented by legal counsel.

- (4) The Judge shall ask the Defendant if he wishes to obtain counsel and, if the Defendant so desires, he will be given a reasonable time to obtain counsel. If the Defendant shows his indigence and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the Defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.
- (5) The Judge should then ask the Defendant whether he wishes to plead “guilty,” “nolo contendere,” or “not guilty.”

(c) Receipt of Plea at Arraignment. The Defendant shall plead “guilty,” “nolo contendere,” or “not guilty” to the offense charged.

- (1) If the Defendant refuses to plead, the Judge shall enter a plea of “not guilty” for him.
- (2) If the Defendant pleads “not guilty,” the Judge shall set a trial date and conditions for bail prior to trial.
- (3) If the Defendant pleads “nolo contendere” or “guilty” the Judge shall question the Defendant personally to determine that he understands the nature of his action, the rights that he is waiving, and that his action is voluntary. The Judge may refuse to accept a guilty plea and enter a plea of “not guilty” for him. If the guilty plea is accepted, the Judge may immediately sentence the Defendant or order a sentencing hearing.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012; amended by TO 2013-16, October 26, 2013; amended by TO 2015-02, June 6, 2015; effective July 6, 2015.]

## **Section 205. Commitments**

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge of the District Court has been issued.

- (a) A temporary commitment shall be issued pending investigation of charges or trial.
- (b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the District Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 206. Joinder**

(a) Joinder of Offenses. Two or more offenses may be charged in one Complaint so long as they are set out in separate counts and:

- (1) They are part of a common scheme or plan, or
- (2) They arose out of the same transaction.

(b) Joinder of Defendants. Two or more Defendants may be joined in one Complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each Defendant need not be charged in each count.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 207. Pleas**

(a) A Defendant may plead guilty, nolo contendere, or not guilty. The District Court shall not accept a plea of guilty or nolo contendere without first addressing the Defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the Defendant refuses to plead or if the District Court refuses to accept a plea of guilty, or nolo contendere, the District Court shall enter a plea of not guilty. The District Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

(b) The Defendant, with the consent of the District Court and of the Prosecuting Attorney, may plead guilty to any lesser offense than that charged which is included in the offense charged in the Complaint or to any lesser degree of the offense charged.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 208. Withdrawing Guilty Plea**

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the District Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 209. Plea Bargaining**

Whenever the Defendant pleads guilty as a result of a plea arrangement with the Prosecuting Attorney, the full terms of such agreement shall be disclosed to the Judge. The Judge, in his discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he should offer the Defendant an opportunity to withdraw his plea and proceed to trial.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 210. Pleading and Motions Before Trial: Defenses and Objections**

(a) Pleading in criminal proceedings shall consist of the Complaint or citation and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with this Title.

(b) Motions raising defenses and objections may be made as follows:

- (1) Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
- (2) Defenses and objections based on defects in the institution of the prosecution of the Complaint other than that it fails to show jurisdiction in the District Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the District Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the District Court on its own motion at any stage of the proceeding.
- (3) Such motions shall be made in writing and filed with the District Court at least five (5) business days before the day set for trial. Such motions will be argued before the District Court on the date of trial unless the District Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury.
- (4) If a motion is decided against a Defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a Defendant, the judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Codes, or enter judgment as is appropriate in light of the decision.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 211. Concurrent Trial of Defendant or Charges**

(a) The District Court may order two or more Defendants tried together if they could have been joined in single Complaint, or may order a single Defendant tried on more than one Complaint at a single trial.

(b) If it appears that a Defendant or the Nation is prejudiced by a joinder of offenses or other Defendants for trial, the District Court may order separate Complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the District Court may order the Nation to deliver to the District Court for inspection in chambers, any statements made by a Defendant which the Nation intends to introduce in evidence at the trial.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 212. Discovery and Inspection**

(a) The Seminole Nation Lighthorse Police, or Prosecuting Attorney, shall, upon request, permit the Defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the Defendant if such are within the possession or control of or reasonably obtainable by the police or prosecution. The Seminole Nation Lighthorse Police and Prosecuting Attorney shall make similarly available copies of reports of physical, mental or scientific test or examinations relating to or done on the Defendant.

(b) The Defendant or his attorney shall reveal by written notice to the District Court and the Prosecuting Attorney at least five (5) working days before trial the names and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the Defendant. Failure to provide such notice shall prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 213. Subpoena**

(a) The Defendant and the Prosecuting Attorney shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

(b) A subpoena may be served any place within the jurisdiction of the District Court, and as provided for service in civil cases.

(c) Failure, without adequate excuse, to obey a properly served subpoena may be deemed contempt of District Court, and prosecution thereof may proceed upon the order of the District Court. No contempt shall be prosecuted unless a return of service of the subpoena has

been made on which is endorsed the date, time and place of service and the person performing such service.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER THREE TRIAL**

### **Section 301. Trial by Jury or by the District Court**

(a) All trials of offenses shall be by the District Court without a jury unless the Defendant files a request for a jury trial and a One Hundred Dollar (\$100.00) jury fee not less than ten business days prior to the day set for trial. A judge may in his discretion waive the jury fee if the Defendant shows that he is without sufficient funds to pay the jury fee.

(b) Juries shall be composed of six (6) members with one alternate if an alternate juror is deemed advisable by the District Court.

(c) In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012; amended by TO 2013-16, October 26, 2013; amended by TO  
2015-02, June 6, 2015; effective July 6, 2015.]

### **Section 302. Trial Jurors**

(a) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedure Code.

(b) The District Court shall permit the Defendant or his counsel and the Prosecuting Attorney to examine the jurors and the District Court itself may make such an examination.

(c) Challenges regarding jury members may be taken as follows:

(1) Each side shall be entitled to three (3) peremptory challenges;

(2) Either side may challenge any juror for cause;

(3) An alternate juror shall be treated as a regular juror for purpose of challenges.

(d) The alternate juror shall be dismissed prior to the jury's retiring to deliberation if he has not first been called to replace an original juror who has become, for any reason, unable or disqualified to serve.

(e) Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 303. Order of Trial**

The trial of all criminal offenses shall be conducted in the following manner:

(a) The District Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the District Court may continue the case or direct the case to proceed in its discretion.

(b) If the parties are ready to proceed, and if the case is to be tried by the jury, the Judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.

(c) If the case is to a jury, the District Court should select a potential jury panel as selected under the Civil Procedure Code by random and question them to determine if they have any interest in the case.

(d) When the District Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the Defendant shall be allowed to question the prospective jurors. The District Court may delay any examination it wishes to make until after the parties have examined the jury panel.

(e) If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the District Court shall dismiss the prospective juror for cause and select another person from the jury panel.

(f) Both the Prosecuting Attorney and the Defendant may alternatively request the District Court to dismiss any juror by peremptory challenge. Each party shall have three (3) peremptory challenges and the District Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.

(g) The District Court should request the Prosecuting Attorney to read the criminal Complaint and to make his opening statement. Prior to reading the Complaint, the District Court should explain to the jury that the Complaint is not evidence, but is being read for the sole purpose of informing the Defendant and the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expect the evidence to show.

(h) The Prosecuting Attorney should then read the Complaint and briefly present the facts which he intends to prove to show the offense. No argument of the fact or law shall be allowed. In reading the Complaint, no reference to any recommendation for banishment may be made prior to the verdict of guilty or not guilty.

(i) The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.



(j) The Prosecuting Attorney shall then present his evidence followed by the Defendant's presentation of his defense evidence. After the Defendant has presented his evidence, the Prosecuting Attorney may present evidence in rebuttal.

(k) The Prosecuting Attorney shall then present his closing argument, the Defendant his closing argument, and the Prosecuting Attorney shall be allowed to present a rebuttal.

(l) If trial is to a jury, the Judge should give them his instructions and they shall return to decide their verdict. If trial is to the Judge, he shall then make his decision or announce the time at which he will present his decision.

(m) If the verdict is "not guilty," the Defendant should be discharged and bail exonerated.

(n) If the verdict is "guilty," the judge may impose sentence immediately or may hold hearing at a later time or date to decide on an appropriate sentence. In a case tried before a jury, the District Court, after receiving a verdict of "guilty," shall inform the jury if banishment has been recommended as a punishment of the offense. The prosecution and the defense shall then be given an opportunity to present any additional evidence they may wish to present on the issue of whether banishment should be imposed, and the prosecution shall be given the final opportunity to rebut any defense evidence. The jury should then be requested to retire and consider whether banishment should be imposed and the maximum term thereof. No banishment shall be imposed in excess of the term recommended by a unanimous vote of the jury, although a recommendation that banishment be imposed is not binding on the Judge.

(o) After sentencing the Judge may hold a hearing to determine appeal bond if an appeal is filed.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 304. Trial by Judicial Panel**

(a) In every trial for an offense or offenses punishable by imprisonment for more than three months in which a jury trial is not requested, the Judge may, in his discretion, upon request of the defense or prosecution, order the matter to be heard by a three (3) Judge panel.

(b) In every trial for an offense or offenses punishable by banishment in which a jury trial is not requested, and in which the Prosecuting Attorney shall recommend in the Complaint that banishment be imposed upon conviction, the District Court shall order the case to be heard before a three (3) Judge panel. If no recommendation for banishment is made in the Complaint or an amendment thereof, banishment may not be imposed.

(c) The Chief Judge shall assign three (3) Judges to sit on the judicial panel for trial, one of whom shall be designated as the presiding Judge for that trial. The Judges chosen for the Judicial Panel shall be subject to disqualification only for good cause shown.

(d) The Presiding Judge in such cases shall rule on all motions, objections, and procedural questions, however, the judgments of conviction or acquittal shall be by majority vote. In cases in which banishment has been recommended, banishment may not be imposed unless there is a unanimous finding of guilt by the judicial panel and a unanimous agreement by the panel that banishment is a proper sentence and the term of banishment must be agreed upon by the judicial panel. The actual vote of each Judge shall be held in strict confidence and only the actual decision shall be announced.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 305. Judge Disability**

(a) If by reason of death, sickness or other disability, the Judge before whom a jury trial has commenced is unable to proceed with the trial, any other District Court Judge may, upon certifying that he has familiarized himself with the record of the trial, proceed with the trial.

(b) If by reason of death, sickness or other disability, the Judge before whom the Defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, any other District Court Judge may perform those duties unless such Judge feels he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains of the prosecution process is the sentencing of a Defendant.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 306. Evidence**

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Evidence Code of the Nation, except as herein otherwise provided.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 307. Expert Witnesses and Interpreters**

(a) Either party may call expert witnesses of their selection and each bear the cost of such.

(b) The District Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a Defendant or witness or communicated to a Defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the District Court.

(c) The trial Judge or Court Clerk may act as interpreter only with the consent of all parties.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 308. Motion for Judgment of Acquittal**

(a) The District Court on motion from Defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the Complaint after the presentation of evidence by the Prosecution or Defendant has been completed and if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the Defendant does not affect his right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all the evidence, the District Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 309. Jury Instructions**

At the close of evidence or at such earlier time during the trial as the District Court reasonably directs, any party may file written requests that the District Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The District Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the District Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission there from unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity for hearing objections by either the Prosecuting Attorney or Defendant shall be given out of the hearing and out of the presence of the jury.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 310. Verdict**

(a) Except as hereinbefore provided in cases where banishment is recommended, the verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open court.

(b) The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the Defendant tried again before a new jury.

(c) If there are multiple Defendants or charges, the jury may at any time return its verdict as to any Defendant or charge to which it has agreed and continue to deliberate on the others.

(d) If the evidence is found to support such verdict, the Defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

(e) Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(f) After return of the verdict, the jury may, in the Judge's discretion, request to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the judge at sentencing except as otherwise provided in the case of sentences of banishment.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER FOUR JUDGMENT AND SENTENCE**

### **Section 401. Judgment**

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the Defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Court Clerk.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 402. Sentence**

Sentence shall be set forth as follows:

(a) Sentence shall be imposed without reasonable delay in accordance with the provisions of the criminal statute or ordinance violated, and this Title. Pending sentence the District Court may commit the Defendant to jail or continue or alter the bail. Before imposing sentence, the District Court shall allow counsel an opportunity to speak on behalf of the Defendant and shall address the Defendant personally and ask him if he wishes to make a statement on his own behalf and to present any information in mitigation of punishment.

(b) After imposing sentence, the District Court shall inform the Defendant of his right to appeal, and if so requested, shall direct the Court Clerk to file a notice of appeal on behalf of the Defendant. At any time after a notice of appeal is filed, the District Court may entertain a motion to set bail pending appeal.

(c) Time served in jail prior to the judgment and sentence while waiting or during trial shall be allowed as a credit toward any sentence of imprisonment or banishment imposed.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 403. General Sentencing Provisions**

Statement of Policy. The sentencing policy of the Nation in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and Nation. While one goal of sentencing is to impress upon the wrongdoer the wrong he has committed, the paramount goal is to restore the victim and Nation to the position that existed prior to commitment of the offense, and to restore the offender to harmony with them and the community by requiring him to right his wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Chapter shall govern the sentencing for criminal offenses within the jurisdiction of the District Court.

(a) Unless the District Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law the District Court shall:

- (1) Order the offender to pay restitution to the victim in money, property, or services; and/or
- (2) Order the offender to pay restitution to the Nation in money, property, or services.

(b) In effectuating the sentencing policy of the Nation, if the offender recognizes the wrong he has committed, and earnestly repents of such wrong, the District Court, paying particular attention to prior offenses, in its discretion may:

- (1) Allow such offender to exchange actual work performed for the Nation in lieu of a fine or imprisonment, at the rate of eight (8) hours of work per twenty-five dollars (\$25.00) of fine; or
- (2) Place the offender on probation under such reasonable conditions as the District Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed; or
- (3) Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum sentence allowed on condition that if the Defendant violated no law and satisfies such other reasonable conditions as may be imposed, such as restitution, the plea or verdict guilty will be withdrawn and said charges will be dismissed; or
- (4) In the discretion of the District Court, allow the offender to pay a fine in goods or commodities at the fair market value of the goods or commodities to be surrendered, provided, that the Nation shall not reimburse the offender for any excess value of the property surrendered; or
- (5) Participate in Community Court deferred Adjudication pursuant to Title 5 Courts.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 404. New Trial**

The District Court, on motion of a Defendant, may grant a new trial to him if required in the interest of justice. If trial was by the District Court without a jury, the District Court, on motion of a Defendant for a new trial, may vacate the judgment it entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the District Court may grant the motion only on remand of the case. A motion for a new

trial based on any other grounds shall be made within seven (7) days after verdict or finding guilty or within such further time as the District Court may fix during the seven-day period.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 405. Arrest of Judgment**

The District Court, on motion of Defendant, shall dismiss the action if the Complaint does not charge an offense or if the District Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or within such further time as the District Court may fix during the seven (7) day period.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 406. Correction or Reduction of Sentence**

The District Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal matter within thirty days after the sentence is imposed, or within thirty days after receipt by the District Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The District Court may also reduce a sentence upon revocation of probation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 407. Clerical Mistakes**

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the District Court at any time and after such notice, if any, as the District Court orders.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER FIVE**

### **APPEAL**

#### **Section 501. Right of Appeal: How Taken**

- (a) The Defendant has the right to appeal from the following:
  - (1) A final judgment of conviction; and the sentence imposed thereon.
  - (2) From an order made, after judgment and sentencing, affecting his substantial rights.
- (b) The Nation has the right to appeal from the following:
  - (1) A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the Defendant prior to trial;
  - (2) An order arresting judgment or acquitting the Defendant contrary to the verdict of the jury or before such verdict can be rendered.
  - (3) An order of the District Court directing the jury to find for the Defendant;
  - (4) An order made after judgment and sentencing affecting the substantial rights of the Nation.
- (c) A notice of appeal must be filed within ten (10) days of the entry of the final judgment and sentence or other appealable order and such must be served on all parties except the party filing the appeal.
- (d) Such appeals shall be had in accordance with the Appellate Procedure Act.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 502. Stay of Judgment and Relief Pending Review**

- (a) A sentence of imprisonment or banishment may be stayed if an appeal is taken and the Defendant may be given the opportunity to make bail. Any Defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.
- (b) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the Defendant, but the District Court may require the Defendant to pay such money subject to return if the appeal should favor the Defendant and negate the requirement for paying such.



(c) An order placing the Defendant on probation may be stayed on motion of the Defendant if an appeal is taken.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA February 2, 2012.]

## **CHAPTER SIX OTHER PROVISIONS**

### **Section 601. Search and Seizure**

(a) Search Warrants. A search warrant is an order directed to any Tribal or Federal law enforcement officer directing him to search a particular place for a described person or property and if found to seize them.

(b) A warrant shall issue only on an affidavit or affidavits sworn to before a District Court Judge and establishing grounds for issuing the warrant. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the judgment may require the affiant to appear personally and be examined under oath.

(c) Contents of Search Warrants. Every search warrant shall contain the name and address of the District Court and the signature of the Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed by any Seminole Nation Lighthorse Police or Federal police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property or persons specified, and contain the date on which it was issued.

(d) Service of Search Warrants. Search warrants shall be served by any Seminole Nation Lighthorse Police or Federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m. unless otherwise directed on the warrant by the Judge who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if present during said search. If the place to be search is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant, if after notice of his authority and purpose, or a person aiding in the execution of the warrant or when the premises to be searched are unoccupied at the time of the search.

(e) Inventory. The officer serving a search warrant shall make a signed inventory of all property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

(f) Return of Search Warrants.

(1) The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

- (2) The warrant shall be returned to the District Court with an inventory of property seized within twenty-four (24) hours of service, Saturdays, Sundays, and legal holidays excluded.
- (3) In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return is due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

(g) **Property Subject to Seizure.** Property which is subject to seizure is property in which there is probable cause to believe such property is:

- (1) Stolen, embezzled, contraband, or otherwise criminally possessed; or
- (2) Which is or has been used to commit a criminal offense; or
- (3) Property which constitutes evidence of the commission of a criminal offense.

(h) **Warrantless Searches.** A law enforcement officer may conduct a search without a warrant only:

- (1) Incident to a lawful arrest; or
- (2) With the consent of the person to be searched, or
- (3) With the consent of the person having actual possession and control of the property to be searched; or
- (4) When he has reasonable grounds to believe that the person searched may be armed and dangerous; or
- (5) When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure, or upon inventory of such vehicle after impoundment and seizure.
- (6) In any other circumstances wherein Federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

(i) A person aggrieved by an unlawful search and seizure may move the District Court for the return of the property, not contraband, on the ground that he is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

(j) A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of

his actions and may, if he has reasonable grounds to believe his own safety or the safety of others nearby is endangered, conduct a frisk type search of such person for weapons.

(k) The term “property” is used in this Section to include documents, books, papers, and any other tangible object.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 602. Arrest**

(a) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(b) A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

- (1) When he has probable cause to believe that a criminal offense has been committed in his presence.
- (2) When he has probable cause for believing the person has committed a criminal offense, although not in his presence, and there is reasonable cause for believing that before a warrant can be obtained, such person may:
  - (A) flee the jurisdiction or conceal himself to avoid arrest, or
  - (B) destroy or conceal evidence of the commission of an offense, or
  - (C) injure or annoy another person or damage property belonging to another person.

(c) If the offense charged is an offense punishable by banishment or in violation of the federal Major Crimes Act, the arrest may be made at his residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person’s residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the resident is specifically authorized by the issuing Judge. Arrest at place other than at the residence may be made at any time.

(d) Upon making an arrest, the arresting officer:

- (1) Must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances; and

- (2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded; and
- (3) May use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law; and
- (4) May break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired; and
- (5) May search the person arrested and take from him and put into evidence all weapons he may have about his person; and
- (6) Shall as soon as is reasonably possible, deliver the person arrested to the Seminole Nation Lighthorse Police Department or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a Complaint.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 603. Arrest in Hot Pursuit**

(a) Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Nation to any point of arrest within or without the jurisdiction of the Nation and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

(b) Any law enforcement officer commissioned by the Federal Government, any Indian Tribe, or State when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may validly arrest such person within the jurisdiction of the Nation, provided, that any person so arrested shall be forthwith delivered to the Seminole Nation Lighthorse Police Chief for a show cause hearing pursuant to the extradition laws of the Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 604. Limitation on Arrests in the Home**

A person may be arrested in the home of the person only in the following circumstances:

- (a) By a law enforcement office pursuant to an arrest warrant.
- (b) By a law enforcement officer for an offense committed in the home in the presence of the officer.

(c) By a law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 605. Notification of Rights**

(a) Upon arrest, the Defendant shall be notified that the Defendant has the following rights:

- (1) The right to remain silent and that any statements made by the Defendant may be used against him in District Court.
- (2) That the Defendant has the right to obtain an attorney at his own expense and to have an attorney present at any questioning.
- (3) That if the Defendant wishes to answer the questions of the Seminole Nation Lighthouse Policy the Defendant may stop or request time to speak with his attorney at any point in the questioning.

(b) Prior to conducting a consensual warrantless search pursuant to Section 601(h) (2) or (3) of this Chapter, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

- (1) The search will be conducted only with the person's consent.
- (2) That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search.
- (3) That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the District Courts.

(c) Whenever possible, the officer should obtain a written statement that the person knows these rights, understands, and waives them prior to taking a voluntary statement from a Defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the District Court determines that the statement or consent to search were voluntary.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 606. Executive Order for Relief from Judgment**

(a) The Principal Chief of the Nation shall have authority to pardon, or commute any judgment and sentence imposed for any criminal offense upon a determination that pardon or commutation of sentence promotes the ends of justice.

(b) Such pardon or commutation will be entered by filing a copy of the proposed action with the District Court Clerk for a period of sixty (60) days after a copy of the proposed executive action has been submitted for approval to each Justice of the Supreme District Court and to each member of the General Council. If, within sixty (60) days after the filing thereof, with proof of service, any such Justice or Council Member shall disapprove the proposed pardon or commutation with written reasons, in a writing delivered to the Principal Chief and filed with the District Court Clerk, such proposed pardon or commutation shall not be approved. Otherwise, upon expiration of the sixty (60) day period, the pardon or commutation may be issued by the Principal Chief of the Nation.

(c) Upon the filing of written reasons for disapproval of such proposed pardon or commutation by any Justice or General Council Member referred to in (b) above, the Principal Chief may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election to determine, by referendum vote of the Nation, whether such pardon or commutation shall be granted. The vote of the People of the Nation shall be conclusive.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 607. Arrest in Cases of Domestic Abuse**

Notwithstanding the provisions of Section 604 of this Title,

(a) As used in this section:

- (1) “Domestic Abuse” means any criminal offense defined by Chapter 1 of Title 6 of the Seminole Code of Laws when the victim and the perpetrator are family or household members.
- (2) “Family or Household Members” means spouses, ex-spouses, former spouses, parents, children, persons otherwise related by blood or marriage, or persons living in the same household or who formerly lived in the same household, including the elderly and the handicapped.

(b) Seminole Nation Lighthorse Police or cross deputized law enforcement officers may arrest without a warrant a person anywhere, including his place of residence, if the law enforcement officer has probable cause to believe the person within the preceding four (4) hours, has committed an act of domestic abuse as defined by this section, although the assault did not take place in the presence of the law enforcement officer, if the law enforcement officer has first observed a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

(c) A law enforcement officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim, provided, that the law enforcement officer may require the victim to sign a Complaint in such matters.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]



## **CHAPTER SEVEN**

### **BAIL**

#### **Section 701. Release in Nonbanishment Cases Prior to Trial**

(a) Any person charged with an offense, other than an offense punishable by banishment, shall, at his appearance before a Judge of the District Court, be ordered released pending trial on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by such judicial officer subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

(b) When such determination is made, the judicial officer shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the District Court, in cash or other security as directed, of a sum not to exceed ten percent (10%) of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;
- (4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- (5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

(c) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at District Court proceedings or of flight to avoid prosecution or failure to appear at District Court proceedings.

(d) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that warrant for his arrest will be issued immediately upon such violation.

(e) A person for whom conditions of release are imposed and who after seventy-two hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the District Court may review such conditions.

(f) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (e) shall apply.

(g) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a District Court of law.

(h) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the District Court, nor to prevent the District Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Lighthouse Police for transmittal to the District Court Clerk and obtain his release prior to his appearance before a Judicial officer.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 702. Appeal from Conditions of Release**

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to Section 701(e) or Section 701(f) by a Judge of the District Court, may move the District Court to amend the order and have such motion determined by a Judge of the District Court. Said motion will be determined promptly.

(b) In any case in which a person is detained after: (1) a Judge of the District Court denies a motion, under subsection (a) above, to amend an order imposing conditions of release; or (2) conditions of release have been imposed or amended by a Judge of the District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Section 701 upon such conditions as the Supreme District Court determines to be proper and this appeal shall be determined promptly.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 703. Release in Banishment Cases or After Conviction**

A person: (1) who is charged with an offense punishable by banishment; or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Section 701 unless the District Court or Judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 702 shall not apply to person described in this Section.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 704. Penalties for Failure to Appear**

Whoever, having been released pursuant to this Chapter willfully fails to appear before the District Court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall: (1) if he was released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of \$5,000.00 and imprisonment for a term of one (1) year, and if banishment is imposed one year shall be added to the term of banishment otherwise imposed; or (2) if he was released in connection with a charge other than as described in (1) above, he shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than one (1) year or both; or (3) if he was released for appearance as a material witness, shall be fined not more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than three (3) months or both.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 705. Person or Classes Prohibited as Bondsmen**

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, magistrates,

judges, District Court clerks, prosecutors or any other person having the power to arrest or having anything to do with the control of Tribal prisoners.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 706. Authority to Act as Bail Bondsmen**

Any person authorized to act as bail bondsmen or runners in the federal or state District Courts shall be qualified to act as bondsmen and runners in the District Court, and be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Supreme Court and District Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER EIGHT**

### **INTENSIVE SUPERVISION & PROBATION**

#### **Section 801. Intensive Supervision Program – Probation Department Policy and Procedures**

(a) Probation Officers shall be officers of the District Court, and the District Court Clerk shall supervise all Probation Officers.

(b) Probation Officers shall work with the Social Services Department and other Departments of the Nation to staff a treatment plan for a Defendant who has received a deferred adjudication pursuant to the Community Court provisions of Title 5 of the laws of the Nation.

(c) Probation Officers shall work forty (40) hours per week. These hours may be set by each Probation Officer for the convenience of his or her clients.

(d) Probation Officers shall have full police powers and shall assist the Lighthouse Police Department when needed. In emergencies, Probation Officers shall contact the Lighthouse Police Department as soon as possible to determine whether their services are required.

(e) Probation Officers shall enforce all orders of the District Court when ordered to do so, in professional and District Courteous manner.

(f) Probation Officers are responsible for keeping a record of all clients assigned to the Probation Department.

(g) Probation Officers shall carry proper credentials identifying themselves as an officer of the Seminole Nation at all times.

(h) Probation Officers shall furnish his own transportation and keep it in a dependable condition and liability insured. Probation Officers shall be paid a mileage fee.

(i) Probation Officers shall dress in a neat and clean, professional manner when on duty.

(j) Probation Officers shall attend schools and training to further their professional education when such training is available.

(k) Probation Officers shall abide by all laws and policies of the Seminole Nation, unless otherwise stipulated in writing.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 802. Appointment of Probation Officers**

The District Court Judge may appoint such Probation Officers, Court Clerks, and other persons as may be required to carry out the work of the District Court, subject to General Council approval of the expenditure of tribal funds to pay such persons. Probation Officers of the District Court may also serve the Juvenile District Court as established by the Seminole Nation in the Juvenile Code.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 803. Duties and Powers of Probation Officers**

The Probation Officer shall make preliminary inquiries and social studies and such other investigations as the Judge may direct, and shall keep written records of such investigations or studies, and shall make reports to the Judge as provided in this Code or as directed by the Judge. Upon the placing of any person upon probation or under protective supervision, the Probation Officer shall explain to the child, if old enough, and the parents and other persons concerned, what the meaning and conditions of probation or protective supervision are and shall give them the necessary instructions. The Probation Officer shall keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the District Court as the District Court may direct. Probation Officers shall use all suitable methods to aid persons on probation or under protective supervision to bring about improvements in their conduct or condition, and shall perform such other duties in connection with the care, custody or transportation of children as the District Court may require. Probation Officers shall have the powers of police officers for purposes of this Code and the Juvenile Code but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular police officer is not immediately available.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 804. Suspension of Sentence and Probation**

(a) Except as otherwise provided in this code, the District Court shall have the authority to suspend the imposition of sentence on a person who has been convicted of an offense or to place him on probation as provided herein.

(b) When the District Court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, as authorized herein, as it deems necessary to insure that he will lead a law abiding life or likely to assist him to do so.

(c) The District Court, as a condition of its order suspending a sentence or probation, may require the Defendant:

- (1) to meet his family responsibilities;

- (2) to devote himself to a specific employment or occupation;
- (3) to undergo available medical or psychiatric or other rehabilitative treatment and to enter and remain in a specified institution, when required for that purpose;
- (4) to attend social services as required to address the underlying causes of the Defendant's criminal activity and listed in the deferred adjudication agreement pursuant to Title 5;
- (5) to attend domestic violence, anger management or parenting classes;
- (6) to pursue a prescribed secular course of study or vocational training;
- (7) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
- (8) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (9) to refrain from all use of intoxicants, narcotic, or drugs, the sale of which is controlled by the Nation or by a Tribal, federal, State government, unless taken or used under a doctor's orders and obtained by a doctor's prescription;
- (10) to have in his possession no firearm or other dangerous weapon unless granted written permission by the District Court or the Probation Department;
- (11) to make restitution to the victims of the crime committed by the Defendant or to make reparation, in an amount he can afford to pay, for the loss or damage caused by the crime;
- (12) to remain within the jurisdiction of the District Court and notify the District Court or the Probation Officer of any change of address or employment;
- (13) to report as directed to the District Court or the Probation Officer and to permit the officer to visit his home;
- (14) to post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
- (15) to pay all or part of a fine and/or District Court costs imposed in the original sentence;

- (16) to satisfy any other conditions reasonably related to the rehabilitation of the Defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty given his status.

(d) The Defendant shall be given a copy of the requirements of his probation stated with sufficient specificity to enable him to guide himself accordingly.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 805. Period of Suspension or Probation; Modification**

(a) During the period of suspension or probation, the District Court, on application of the Probation Officer or of the Defendant, or on its own motion, may modify the requirements imposed on the Defendant or add further requirements consistent with the rehabilitative needs of the Defendant or may discharge the Defendant, after notice to the parties and hearing if requested.

(b) Upon the successful termination of the period of suspension or probation, or the earlier discharge of the Defendant, the Defendant may be relieved of any obligations imposed by the District Court order and shall have satisfied his sentence for the offense.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 806. Violation of Terms of Suspension or Probation**

(a) At any time before the discharge of the Defendant or the termination of the period of suspension or probation:

- (1) the District Court may summon the Defendant to appear before it or it may issue a warrant for his arrest;
- (2) a probation or law enforcement officer, having probable cause to believe the Defendant has failed to comply with a requirement imposed as a condition of the probation order or that he had committed another crime, may arrest him without a warrant;
- (3) the District Court, if there is probable cause to believe that the Defendant has committed another crime or if he has been held to answer therefore, may commit him without bail, pending a determination of the charge by the District Court;
- (4) the District Court, if satisfied or has probable cause to believe that the Defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the suspension or probation order, or if he has been convicted of another crime, or the District Court has probable cause



to believe the Defendant has committed a crime, may revoke the suspension or probation and re-impose the original sentence.

(b) The District Court shall not revoke suspension or probation or increase the requirements imposed thereby except after a hearing upon written notice to the Defendant of the grounds on which such action is proposed. The Defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel of his choice at his own expense.

(c) Whenever a Defendant is taken into and held in custody as provided in this section for violation of suspension or probation conditions other than the alleged commission of an offense, he shall be entitled to have his sentence considered by the District Court within one hundred forty four (144) hours of his confinement, excluding weekends and holidays, unless he requests further time to prepare his defense.

(d) Only the District Court has the power to set bail for Defendants taken into custody as provided by this section and no bail shall be set until the District Court has done so. Any bail or bond must be a cash bond or certified funds such as a cashier's check or money order. The District Court, without hearing, may forfeit the bond and apply it to fines and or restitution not yet paid by the Defendant if the Defendant's sentence is revoked in whole or in part.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 807. Order Removing Disqualification or Disability Based on Conviction**

When the District Court has suspended sentence or has sentenced the Defendant to be placed on probation and the Defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence, the District Court may order that so long as the Defendant is not convicted of another offense, the judgment shall not constitute a conviction for the purpose of any disqualification or disability imposed by law upon conviction of a crime or offense.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 808. Final Judgment**

A judgment suspending sentence or sentencing a Defendant to be placed on probation shall be deemed tentative to the extent such is modifiable as provided herein, but for all other purposes shall constitute a final judgment.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 809. Trials – Suspension of Sentence – Probation**

(a) If it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served thereby, the District Court may, in its discretion, place the Defendant upon probation in the following manner:

- (1) The District Court may suspend the imposing of sentence and may direct that the suspension continue for such period of time, not exceeding the maximum term of sentence which may be imposed, and upon such terms and conditions as the District Court determines, and shall place such person on probation, under the charge and supervision of the Probation Officer of the District Court during such suspension.
- (2) If the sentence is to pay a fine, and the Defendant is imprisoned until the fine is paid, the District Court, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum term of sentence which may be imposed on such terms as it determines. The Defendant shall be on probation, under the charge and supervision of the Probation Officer during such suspension, for the purpose of giving the Defendant an opportunity to pay the fine. Upon payment of the fine, the sentence shall be satisfied and the probation cease.

(b) Upon the revocation and termination of the probation, the District Court may, if the sentence has been suspended, pronounce sentence at any time after the suspension of the sentence within the longest period for which the Defendant might have been sentenced, but if the sentence has been pronounced and the execution thereof has been suspended, the District Court may revoke such suspension, whereupon the sentence shall be in full force and effect, and the person shall be delivered to the proper officer to serve sentence.

(c) The District Court may at any time during the period of probation revoke or modify its order of suspension of imposition or execution of sentence. It may at any time, when the ends of justice will be served thereby, and when good conduct and reform of the person so held on probation warrants it, terminate the period of probation and discharge the person so held, and in all instances, if the District Court has not seen fit to revoke the order of probation and impose sentence or pronounce sentence, the Defendant shall, at the end of the term of probation, be discharged by the District Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 810. Probation Officers**

(a) A Probation Officer shall have the authority of a police officer to make arrest for violation of probation or parole agreements.

(b) The Probation Officers, subject to the supervision of the chief judge, shall have the responsibility of assuring the faithful performance of probation agreements by persons

subject thereto, counseling such persons and their families, preparing pre-sentence or other reports as requested by a District Court Judge, and perform other duties as directed by a District Court Judge or otherwise required by law.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER NINE**

### **GRAND JURY**

#### **Section 901. Calling the Grand Jury**

Upon written petition of the Prosecuting Attorney, any judge of the District Court shall order a Grand Jury to be convened.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 902. Term of the Grand Jury**

Except as hereinafter provided, and except in the case of special Grand Juries called to investigate a particular circumstance, a term of the Grand Jury shall not continue longer than one hundred twenty (120) days after the date upon which it is impaneled and sworn.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 903. Selection and Qualifications of Jurors**

Grand Jurors shall be selected and qualified as provided in Chapter Three of Title 7 of the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 904. Grand Jury Defined**

A Grand Jury is a body consisting of six jurors impaneled and sworn to inquire into and true presentment make of all public offenses against the Nation committed or subject to prosecution within the jurisdiction of the Nation. Any five of the grand jurors concurring may find an indictment or return a true bill.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 905. Challenge of Grand Jury**

The Nation, or a person held to answer a charge for a public offense, may challenge the panel of a Grand Jury, or an individual Grand Juror.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 906. Grounds for Challenge to Panel**

A challenge to the panel may be interposed by either party for one or more of the following causes only:

- (a) That the requisite number of ballots was not drawn from the Jury wheel of the Nation.
- (b) That the drawing was not conducted in the presence of the officers designated by law, or in the manner prescribed by law.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 907. Jury Discharged if Challenge Allowed**

If a challenge to the panel be allowed, the Grand Jury must be discharged.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 908. Grounds for Challenge to Juror**

A challenge to an individual Grand juror may be interposed by either party, for one or more of the following causes only:

- (a) That he is a minor.
- (b) That he is not a qualified juror.
- (c) That he is otherwise disqualified under any of the provisions of law, in relation to the qualification of grand jurors.
- (d) That he is insane.
- (e) That he is a Prosecutor upon a charge against the Defendant.
- (f) That he is a witness on the part of the Prosecution and has been served with process by an undertaking as such.
- (g) That a state of mind exists on his part in reference to the case, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a grand juror, by reason of having formed and expressed an opinion upon the matter or cause to be submitted to such Jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the District Court, upon his declaration, under oath, or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 909. Challenge May be Oral or Written – How Adjudicated**

Challenges may be oral or in writing, and must be adjudicated by the District Court.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 910. Ruling on Challenge**

The District Court must allow or disallow the challenge and the Court Clerk must enter its decision upon the record of the District Court if demanded.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 911. Effect of Challenge Allowed**

If a challenge to an individual Grand Juror is allowed, he cannot be present at, or take part in the consideration of the charge against the Defendant who interposed the challenge, or the deliberations of the Grand Jury thereon.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 912. Violation, Where Challenge Allowed**

The Grand Jury must inform the District Court of a violation of the last section and it is punishable by the District Court as contempt.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 913. Challenge to be Made Before Jury is Sworn – Exception**

Neither the Nation, nor a person held to answer a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror unless it be by challenge, and before the Grand Jury is sworn, except that after the Grand Jury is sworn, and before the indictment is found, the District Court may, in its discretion, upon a good cause shown, receive and allow a challenge.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 914. New Grand Jury in Certain Cases**

If the Grand Jury is discharged by the allowance of a challenge to the whole panel; or if from any cause, in the opinion of the District Court, another Grand Jury may become necessary; the District Court may in its discretion order that another Grand Jury be summoned.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 915. Special Grand Jury**

(a) A Grand Jury formed and impaneled as to a particular case(s), after a challenge or challenges to individual Grand Jurors have been allowed, shall be sworn to act only in such particular case(s), and as to all other cases at the same term of the District Court the Grand Jury shall be formed in the usual manner provided by law.

(b) A special Grand Jury may continue in existence for such period of time as may be necessary to properly act in the particular case(s) for which it is formed.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 916. District Court to Appoint Foreman**

From the persons summoned to serve as Grand Jurors, and appearing, the District Court must appoint a foreman. The District Court must also appoint a foreman when a person already appointed is discharged or excused before the Grand Jury are dismissed.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 917. Oath to Foreman**

The following oath must be administered to the foreman of the Grand Jury:

You, as foreman of this Grand Jury, shall diligently inquire into, and true presentment make, of all public offenses against the Seminole Nation, committed or subject to prosecution within the jurisdiction of this District Court, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the Seminole Nation, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor or affection, or for any reward, or the promise or hope thereof; but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 918. Oath to Other Grand Jurors**

The following oath must be administered to all members of the Grand Jury, not including the Foreman:

You shall diligently inquire into, and true presentment make, of all public offenses against the Seminole Nation, committed or subject to prosecution within the jurisdiction of this District Court of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the Seminole Nation, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof; but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 919. Reserved**

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 920. Charge to Grand Jury**

The Grand Jury, being impaneled and sworn, must be charged by the District Court. In doing so the District Court must give them such information as it may deem proper as to the nature of their duties, and as to the charges for public offenses returned to the District Court, or likely to come before the Grand Jury.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 921. Jury to Retire**

The Grand Jury must then retire to a private room and inquire into the offenses cognizable by them.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]



## **Section 922. Grand Jury Must Appoint Clerk**

The Grand Jury must appoint one of their number a clerk, who must preserve minutes of their proceedings, except of the votes of the individual members, and of the evidence given before them.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 923. Discharge of Grand Juror**

A member of the Grand Jury may for ill health of himself or immediate family, or other cause rendering him unable to serve, be discharged before the term is ended or the labor of the Grand Jury completed; or if the Judge becomes satisfied that any grand juror is willfully refusing to discharge his duty, the District Court may order his discharge. In either event or in case of the death of one or more grand jurors, as many names as the District Court may order shall be drawn from the Jury wheel in the same manner the original grand jurors were drawn, and from the names so drawn that shall be summoned as many grand jurors as can be found and are able to attend as necessary, and if found they shall be summoned in the order in which their names were drawn from the wheel. If the number be not thus obtained there shall be another drawing in the same manner. When a sufficient number so drawn appears to fill the panel, the Grand Jury shall in open District Court be re-impaneled, but subject to challenge and be charged and sworn in the same manner as when the Grand Jury was originally impaneled.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 924. Discharge of Grand Jury**

On the completion of the business before the Grand Jury, or completion of the statutory time limit for sessions of a Grand Jury, or whenever the District Court shall be of the opinion that the public interests will not be served by further continuance of the session, the Grand Jury must be discharged, but whether the business be completed or not they are to be discharged not later than one hundred twenty (120) days after the date on which they be first impaneled.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 925. General Powers and Duties of Grand Jury**

The Grand Jury has power to inquire into all public offenses committed or subject to prosecution in the jurisdiction of the Nation, and to present them to the District Court, by indictment or accusation in writing.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 926. Foreman to Swear Witness**

The foreman may administer an oath to any witness appearing before the Grand Jury.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 927. Evidence Before Grand Jury**

In the investigation of a charge for the purpose of presenting an indictment or accusation, the Grand Jury may receive the written testimony of the witness taken in a preliminary examination of the same charge, and also the sworn testimony prepared by the Prosecuting Attorney without bringing those witnesses before them, and may hear evidence given by witnesses produced and sworn before them, and may also receive legal documentary evidence. Each indictment or accusation shall be voted on separately by the Grand Jury.

**Section 928. Hearsay Inadmissible**

The Grand Jury may not receive hearsay or secondary evidence.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 929. Evidence for the Accused – Procuring Additional Evidence**

The Grand Jurors, upon request of the accused, shall, and on their own motion may, hear the evidence for the accused. It is their duty to weigh all the evidence submitted to them and when they have reason to believe that there is other evidence, they may order such evidence to be produced, and for that purpose the Prosecuting Attorney shall cause process to issue for the witnesses.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 930. Indictment to be Found When**

The Grand Jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial District Court or jury.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 931. Members to Give Evidence**

If a member of the Grand Jury knows, or has reason to believe, that a public offense has been committed, which is eligible to submit for trial in the jurisdiction of the Nation, he must declare the same to his fellow jurors, who must thereupon investigate the same.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 932. Subjects for Inquiry by Grand Jury**

The Grand Jury must inquire:

- (a) Into the case of every person imprisoned in the jail utilized by the Nation, on a criminal charge, and not indicted or formally charged by information.
- (b) Into the condition and management of the jail utilized by the Nation; and,
- (c) Into the willful, wrongful, or corrupt misconduct in office of public officers of every description in the jurisdiction of the Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 933. Access to Prisons and Records**

The Grand Jury is also entitled to free access at all reasonable times, to the tribal jail, and to the examination, without charge, of all public records of the Nation.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 934. Advice of District Court or Prosecuting Attorney – Who May Be Present**

The Grand Jury may at all reasonable times ask the advice of the District Court or of the Prosecuting Attorney. In no event shall the Grand Jury be advised as to the sufficiency or insufficiency of the evidence necessary to return a true bill, in a matter under investigation before them. The Prosecuting Attorney, with or without a regularly appointed Assistant Prosecuting Attorney individually or collectively, may at all times cause to be issued subpoenas for the attendance of witnesses and other evidence, appear before the Grand Jury for the purpose of giving information or advice relative to any matter cognizable before them, and may interrogate witnesses before them whenever he thinks it necessary. A qualified District Court Clerk or reporter shall be present and take the testimony of all witnesses as in cases at trial and upon request a transcript of said testimony or any portion thereof shall be made available to an accused or the Prosecuting Attorney, at the expense of the requesting party or officer. But no other person is permitted to be present during their sessions except the members and a witness actually under examination, except that an interpreter, when necessary, may be present during the interrogation of a witness. Provided that, no person, except the members of the Grand Jury, shall be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 935. Proceedings Kept Secret**

Every member of the Grand Jury must keep secret whatever he himself or any other grand juror may have said or in what manner he or any other grand juror may have voted on a matter before them.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 936. Juror May Disclose Proceedings, When**

A member of the Grand Jury may, however, be required by any District Court to disclose the testimony of a witness examined before the Grand Jury for the purpose of ascertaining whether it is consistent with that given by the witness before the District Court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony or upon his trial thereof.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 937. Privilege of Grand Juror**

A Grand Juror cannot be questioned for anything he may say, or any vote he may give in the Grand Jury, relative to a matter legally pending before the Jury, except for a perjury of which he may have been guilty in making an accusation of giving testimony to his fellow jurors.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 938. Interpreter – Appointment – Compensation**

(a) Upon the request of either the Prosecuting Attorney, or the Grand Jurors, a District Judge shall appoint, whenever necessary, an interpreter, and shall swear him to secrecy, not to disclose any testimony or the name of any witness which shall be presented to the Grand Jury except when testifying in a District Court of record.

(b) The compensation for any interpreter thus appointed shall be fixed and allowed by the judge appointing him, and such fees, when earned, may be allowed and paid from time to time as they accrue, and shall be paid from the funds from which the grand jurors are paid.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 939. Restriction on Sessions Before and After Elections**

No Grand Jury shall be convened or remain in session during a period beginning thirty (30) days before any primary, run-off primary, or general election, for elected office of the Seminole

Nation, and ending ten (10) days after such primary, run-off primary, or general election. Any Grand Jury in session at the commencement of any such period shall be discharged forthwith.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 940. Reports of Investigations of Public Offices or Institutions**

In addition to any indictments or accusations that may be returned, the Grand Jury, in their discretion, may make formal written reports as to the condition and operation of any public office or public institution investigated by them. No such report shall charge any public officer, or other person with willful misconduct or malfeasance, nor reflect on the management of any public office as being willful and corrupt misconduct. It being the intent of this section to preserve to every person the right to meet his accusers in open District Court and be heard, in open District Court, in his defense.

[HISTORY: Enacted by TO 2009-03, December 5, 2009; approved by BIA  
February 2, 2012.]

**TITLE 8  
ECONOMIC DEVELOPMENT  
INDEX**

<b>TITLE 8 ECONOMIC DEVELOPMENT INDEX.....</b>	<b>i</b>
<b>TITLE 8 ECONOMIC DEVELOPMENT .....</b>	<b>1</b>
<b>ARTICLE I CREATING SEMINOLE NATION GAMING ENTERPRISE AND RE- ESTABLISHING SEMINOLE NATION DIVISION OF COMMERCE.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL; TITLE; FINDINGS; PURPOSE; ECONOMIC DEVELOPMENT AUTHORITY; DEFINITIONS .....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Findings .....	1
Section 103. Purpose .....	2
Section 104. Definitions .....	3
Section 105. Repealed .....	5
Section 106. Severability of Provisions .....	6
<b>CHAPTER TWO SEMINOLE NATION GAMING ENTERPRISE .....</b>	<b>7</b>
Section 201. Establishment .....	7
Section 202. Gaming Enterprise Board .....	7
Section 203. Gaming Operations.....	9
Section 204. Repealed .....	10
Section 205. Repealed .....	11
Section 206. Repealed .....	11
<b>CHAPTER THREE SEMINOLE NATION DIVISION OF COMMERCE.....</b>	<b>12</b>
Section 301. Seminole Nation Division of Commerce.....	12
Section 302. Status of Agency .....	12
Section 303. Board of Directors .....	12
Section 304. Appointment of Members of Board of Directors .....	13
Section 305. Qualifications of Appointed Members of the SNDOC Board .....	13
Section 306. Bond and Insurance Requirements SNDOC Board.....	14
Section 307. Terms of Office and Reappointments.....	14
Section 308. Vacancies .....	15
Section 309. Duties of Officers .....	15
Section 310. Compensation and Expenses.....	16
Section 311. Meetings of the SNDOC Board .....	17
Section 312. Authority, Powers, and Limitations Thereon.....	18

<b>CHAPTER FOUR SDOC OPERATIONS .....</b>	<b>25</b>
Section 401. SDOC Operations .....	25
Section 402. Purposes .....	25
Section 403. SDOC Chief Executive Officer and Chief Financial Officer .....	26
Section 404. Chief Executive Officer .....	26
Section 405. Chief Financial Officer and Departmental Directors.....	28
Section 406. Organization of SDOC.....	28
<b>ARTICLE II SEMINOLE ENTERPRISES COMMON OPERATING PROVISIONS .....</b>	<b>30</b>
<b>CHAPTER FIVE STANDARDS OF CONDUCT.....</b>	<b>30</b>
Section 501. Indemnification .....	30
Section 502. Standards of Conduct .....	31
Section 503. Removal of Board Members .....	34
<b>CHAPTER SIX SEMINOLE NATION BUSINESS ENTERPRISES .....</b>	<b>37</b>
Section 601. Administration of Enterprises .....	37
Section 602. Organization of Business Enterprises.....	37
<b>CHAPTER SEVEN RESTRICTIONS ON TRANSFER OF OWNERSHIP OF SEMINOLE ENTERPRISES AND SUB-ENTITIES .....</b>	<b>39</b>
Section 701. Ownership of Enterprises.....	39
Section 702. Ownership and Restrictions on Transfer of Ownership .....	39
Section 703. Restrictions Against Management Amendment of Governing Documents...	39
Section 704. Ownership and Control of Sub-Entities, Restrictions on Transfer.....	39
<b>CHAPTER EIGHT PROCUREMENT .....</b>	<b>40</b>
Section 801. Contracts, Purchasing, Procurement.....	40
Section 802. Accounting Services .....	43

**TITLE 8  
ECONOMIC DEVELOPMENT**

**ARTICLE I  
CREATING SEMINOLE NATION GAMING ENTERPRISE AND RE-  
ESTABLISHING SEMINOLE NATION DIVISION OF COMMERCE**

**CHAPTER ONE  
GENERAL; TITLE; FINDINGS; PURPOSE; ECONOMIC  
DEVELOPMENT AUTHORITY; DEFINITIONS**

**Section 101. Title**

This law shall be entitled the Seminole Nation Commerce, Economic Development and Business Creation Act of 2010.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

**Section 102. Findings**

It is hereby declared and determined that:

(a) As a federally-recognized Indian Nation possessing inherent sovereign powers and the right of self-determination, the Seminole People, pursuant to the Constitution of the Seminole Nation of Oklahoma, duly adopted on March 12, 1969 and approved by the Commissioner of Indian Affairs on April 15, 1969, charged the General Council with responsibility to advance the social and economic well-being of the Nation and imbued it with the authority to enact laws for such purposes;

(b) Conscious of its constitutional obligations to serve, advance, and protect the rights, interests, and security of the Seminole Nation and the health, education and welfare of its membership and, after careful consideration, recognizing that in order to fulfill these obligations, the General Council is resolved to replace the current economic development structure with one subject to higher standards of accountability and stronger internal controls to safeguard the reputation and integrity of its business enterprises and enhance the Nation's economy and prosperity;

(c) Recognizing that unemployment and underemployment, slow economic growth, and limited opportunity hinder the social, economic, and cultural well-being of the Seminole Nation, the General Council is committed to economic revitalization and the restoration of prosperity by strengthening its economy;

(d) Convinced of the necessity for structural reform, increased operational oversight, and higher standards of accountability, the General Council is equally certain that the success and profitability of its enterprises requires a substantial degree of separation between the Nation's political processes and the planning, development, and operation of its business enterprises and activities; and



(e) Desiring to achieve a proper balance between its stewardship responsibilities to the Seminole people and its economic goals and objectives on their behalf, the General Council, within the boundaries prescribed herein and subject to all requisite conditions and restrictions, delegates broad authority to the Seminole Nation Gaming Enterprise and Seminole Nation Division of Commerce through their Boards of Directors, Officers and Enterprise Managers who shall serve under a solemn obligation to serve, advance, protect, and act in the best interests of the Seminole Nation.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

### **Section 103. Purpose**

The Seminole Nation Commerce, Economic Development and Business Creation Act of 2010 is hereby enacted for the purposes of:

(a) Amending, superseding, and replacing in the entirety, the Seminole Nation Commerce and Accountability Act; provided that this Act shall be codified in Title 8 of the Seminole Nation Civil Code, entitled "Economic Development."

(b) Establishing the Seminole Nation Gaming Enterprise as an agency and instrumentality of the Seminole Nation charged with:

- (1) Promoting the economic development of the Seminole Nation by planning, developing, establishing, financing and administratively supporting a financially successful and self-sustaining Gaming Enterprise of the Seminole Nation;
- (2) Protecting, maintaining, and properly distributing all funds, accounts and other property that come under its administrative authority or control, or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities under this Title;
- (3) Providing business analysis, business development, strategic planning, operations management, accounting, human resources, information technology, procurement, and other planning, development, and administrative support services to each of the Nation's gaming facilities; and
- (4) Preparing budgets for the gaming operations and each of its gaming facilities, establishing and maintaining comprehensive internal control standards, including the maintenance of an appropriate system of accounting, audit, and proper books and records for each casino as well as the overall Gaming Enterprise and its organizational components.

(c) Re-establishing the Seminole Nation Division of Commerce as an agency and instrumentality of the Seminole Nation charged with:

- (1) Advancing, promoting, developing, expanding, financing, and administratively supporting the Seminole Nation's business enterprises;
- (2) Promoting the economic development of the Seminole Nation by planning, developing, establishing, financing and administratively supporting financially successful and self-sustaining business enterprises of the Seminole Nation as well as attracting commercial, agricultural, and industrial development to the Seminole Nation;
- (3) Expanding the Seminole Nation land base and investing in the Nation's economic development potential through the purchase of additional lands on behalf of the Nation.
- (4) Providing comprehensive land use and economic development services and evaluating investment, re-investment, and development opportunities;
- (5) Financing or securing outside financing for enterprise establishment, expansion, or acquisitions and performing all related tasks and activities;
- (6) Protecting, maintaining, and properly distributing all funds, accounts and other property that come under its administrative authority or control, or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities under this Title.
- (7) Providing business analysis, business development, strategic planning, operations management, accounting, human resources, information technology, procurement, and other planning, development, and administrative support services to each of the Nation's enterprises utilizing the administrative capacities of the Division of Commerce; and
- (8) Preparing budgets for SNDOC and each of its enterprises, establishing and maintaining comprehensive internal control standards, including the maintenance of an appropriate system of accounting, audit, and proper books and records for each enterprise as well as the overall Division of Commerce and its organizational components.
- (9) Establishing a more direct method for creation of the Nation's business enterprises, their purposes and administration.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

#### **Section 104. Definitions**

The following terms wherever used or referred to in this law, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (a) "Chief" means the Chief of the Seminole Nation of Oklahoma.
- (b) "Claim" means any action for damages or equitable relief arising in tort or contract

law.

(c) “Employee” shall mean the Boards of Directors, Officers, Enterprise Managers and any other supervisory position appointed by the General Council or Executive Branch of the Seminole Nation for purposes of facilitating the operations of the Gaming Enterprise, the Seminole Nation Division of Commerce, its agencies, instrumentalities, departments and enterprises. All other employees of the Seminole Nation Division of Commerce, including enterprise employees, shall be designated with a lower case “e”.

(d) “Enterprise” means a business entity established in accordance with Title 4A of the Seminole Nation Code of Laws or a business entity (including but not limited to: companies, corporations, limited liability companies, partnerships, limited liability partnerships, joint ventures, and/or any other business arrangements or business structures commonly engaged in by public or corporate bodies of the character of SNDOC or the Gaming Enterprise) that is established by or in cooperation with and/or acquired by or in cooperation with SNDOC or the Gaming Enterprise or that is otherwise subject to the administrative responsibility of the Gaming Enterprise or SNDOC, including all entities and sub-entities wholly owned by the Seminole Nation and supported by the Gaming Enterprise or SNDOC.

(e) “Executive Branch” means the office of the Principal Chief and Assistant Chief as provided under Article III of the Constitution of the Seminole Nation of Oklahoma.

(f) “Gaming Enterprise Board” means the group of Members who jointly supervise the activities of SNGE.

(g) “Gaming Facilities” means a class III gaming facility operated by SNGE and licensed under Title 15.

(h) “Gaming Operations” means the division within SNGE, which is under the control of Gaming Enterprise Board, but is responsible for day to day operations of the Gaming Facilities.

(i) “General Council” means the General Council of the Seminole Nation of Oklahoma.

(j) “Gross Receipts” means total revenue prior to deducting expenses.

(k) “Immediate Family” means spouse, son, daughter, son-in-law, daughter-in-law, mother, father, sister, brother, grandparent and grandchild.

(l) “Managers” means the individuals hired by the Gaming Enterprise Board to carry out day to day business functions of Gaming Operations.

(m) “Members” means the individuals who were appointed by the Chief and confirmed by the General Council to serve on the Gaming Enterprise Board.

(n) “Net Profits” means the revenues less expenses in accordance with Generally Accepted Accounting Principles, except as otherwise defined in the Seminole Nation Gaming Ordinance, Indian Gaming Regulatory Act, or pursuant to the Nation’s gaming compact with the State of Oklahoma.

(o) “Net Revenues” shall have the same meaning as that defined in Section 2703(a) of the Indian Gaming Regulatory Act.

(p) “Personal Property” means any property which is the subject of ownership not coming under the denomination of real property.

(q) “Real Property” means land and interests in land, including, generally, whatever is erected or growing upon or affixed to land, including but not limited to the surface of the land, structures and plants or crops on the surface of the land, minerals rights, and water rights.

(r) “Seminole Hiring Preference” means the standard to be applied in the final selection process when there are two candidates for the same position, one of whom is a Seminole Tribal member and one of whom is not, who are equally qualified for the position in terms of education, background, training, and experience, in which case hiring preference shall be accorded to the qualified member of the Seminole Nation

(s) “Seminole Nation Court” means the Seminole Nation Judicial System authorized to exercise criminal and/or civil jurisdiction over actions arising in Indian country within the Seminole Nation.

(t) “SNGE” means the Seminole Nation Gaming Enterprise.

(u) “Sub-Entity” means a business entity established pursuant to Title 4A of the Seminole Nation Code of Laws, or a business entity (including but not limited to: companies, corporations, limited liability companies, partnerships, limited liability partnerships, joint ventures, and/or any other business arrangements or business structures commonly engaged in by public or corporate bodies of the character of Sndoc or the Gaming Enterprise) that is established to expand or increase the productivity of a business enterprise. A sub-entity may allow ownership of third parties other than the Nation, the Gaming Enterprise, Sndoc or a business enterprise.

(v) “Territorial Jurisdiction” means all “Indian Country” lands as defined by federal law located within the geographical boundaries of the Seminole Nation as they existed in 1890 pursuant to the Treaty of March 21, 1866, 14 Stat. 755 entered into by the Seminole Nation and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries owned in fee by the Seminole Nation of Oklahoma or held in trust land by the United States on behalf of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO-2014-04, March 18, 2014; amended by TO 2016-01, March 5, 2016; amended by TO 2020-12, September 5, 2020.]

#### **Section 105. Repealed**

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; repealed by TO 2020-12, September 5, 2020.]

**Section 106. Severability of Provisions**

If any provision of this law or the application thereof to any persons or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this law or its application to other persons and circumstances, but shall be confined in its operation to the provisions of this enactment or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2020-12, September 5, 2020.]

## **CHAPTER TWO**

### **SEMINOLE NATION GAMING ENTERPRISE**

#### **Section 201. Establishment**

(a) **Governmental Subdivision.** The General Council hereby establishes SNGE as a governmental subdivision of the Seminole Nation of Oklahoma, charged with the responsibility to administer and manage the Gaming Facilities.

(b) **Organization.** SNGE is the governmental subdivision charged with operating the Gaming Facilities. In doing so, Gaming Operations is controlled and managed by Gaming Enterprise Board.

(c) **Duration.** SNGE shall have perpetual existence in its own name, unless dissolved by the General Council.

(d) **Arm of the Tribe.** As a wholly-owned governmental subdivision of the Nation, SNGE possesses certain attributes of sovereignty, including but not limited to, sovereign immunity.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011;  
amended by TO 2016-01, March 5, 2016; amended by TO 2020-12, September 5, 2020.]

#### **Section 202. Gaming Enterprise Board**

(a) **Members.**

(1) *Appointment.* The Gaming Enterprise Board shall be governed by three (3) Members, which are appointed by the Chief and confirmed by the General Council. At least two (2) Members must be enrolled tribal members of the Seminole Nation of Oklahoma. A Member may not concurrently serve as a Member on the Gaming Enterprise Board and as a General Council Representative.

(2) *Qualifications.* To serve as a Member, a candidate must possess:

- i. a college degree in business related courses; and
- ii. five (5) years gaming supervisory experience.

(3) *Term of Office.* Appointments expire two (2) years from the date confirmed by the General Council.

(4) *Vacancies.* If there is a vacancy on the Gaming Enterprise Board, the Chief shall appoint another qualified person to fill the position, subject to approval of the General Council.

- (5) *Removal.* Chief may suspend a Member from exercising duties and powers until a vote of the General Council to remove the Member occurs. A Member may be removed by vote of the General Council for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of gaming.
  - (6) *Compensation.* The compensation of Member shall be established from time to time by the General Council.
  - (7) *Licensing.* Appointments are conditioned upon the candidate receiving and maintaining a gaming license as a primary management official. The candidate must apply for licensure within thirty (30) days of confirmation if they do not have the required license. No candidate may serve as Member until granted the required license.
- (b) Duties. The Gaming Enterprise Board shall:
- (1) employ, supervise and direct General Manager to conduct day-to-day business over the Gaming Operations;
  - (2) oversee the planning and development to expand gaming opportunities;
  - (3) draft and implement codes of conduct for all SNGE employees;
  - (4) draft and implement personnel policies and procedures to be followed in hiring, supervising, managing, promoting, disciplining and terminating SNGE employees;
  - (5) draft and implement policies related to facilities maintenance, safety and security;
  - (6) properly maintain and distribute property acquired by SNGE;
  - (7) establish an internal auditing system of operations;
  - (8) promptly report violations of Title 15 to the Lighthouse Police and the Nation's Attorney General and cooperate with any investigation conducted by the Lighthouse Police, Nation's Attorney General and federal law enforcement agencies; and
  - (9) provide the General Council with an annual report and quarterly report containing the information provided under Section 203(b)(3) of Title 8.
- (c) Powers. The Gaming Enterprise Board may:
- (1) negotiate with entities looking to do business with SNGE;

- (2) contract with entities for goods, services, grants, accounts and supplies for the efficient operation of SNGE;
  - (3) provide a limited waiver of SNGE's sovereign immunity provided that the limited waiver contains the following: (i) claims may only be brought against SNGE; (ii) claims may only be brought by the contracting party and no other entity; (iii) claims are limited to breach of contract; (iv) any damages must be limited to injunctive relief and monetary damages may not exceed the actual contracted amount; (iv) claims may not be brought in any state court; and (v) the limited waiver may not be assignable; and
  - (4) delegate these same powers to Gaming Operations provided that any contract negotiated by Gaming Operations exceeding \$20,000.00 must be approved by resolution of the Gaming Enterprise Board.
- (d) Prohibited Acts. Absent General Council approval, the Gaming Enterprise Board may not:
- (1) enter management contracts as provided in 25 U.S.C. § 531.1;
  - (2) enter contracts exceeding seven (7) years;
  - (3) purchase real property exceeding \$3,000,000.00;
  - (4) borrow money exceeding \$1,000,000.00;
  - (5) enter a contract which violates Section 202(c)(3);
  - (6) purport to waive the sovereign immunity of the Seminole Nation of Oklahoma; or
  - (7) bind the Seminole Nation of Oklahoma to any contract.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2016-01, March 5, 2016; amended by TO 2020-12, September 5, 2020.]

### **Section 203. Gaming Operations**

- (a) Managers.
  - (1) *Appointment.* Managers are appointed by the Gaming Enterprise Board and serve SNGE under the direction of the Gaming Enterprise Board as an at will employee.
  - (2) *Qualifications.* To be eligible to serve as a Manager of the Gaming Operations, individuals must, at a minimum, possess prior experience or training in the operation or regulation of a tribal gaming operation or casino, and:
    - i. a post-graduate degree from an accredited college or university;



- ii. a bachelors degree from an accredited college or university in business administration, finance, accounting, banking, finance or other business-related degree program plus a minimum of two (2) years of work experience in gaming, business administration, business management, accounting or other business-related field; or
- iii. a bachelors degree from an accredited school in any other field with at least five (5) years experience.

(3) *Limitations.* No person who serves as an elected tribal official, General Council Representative, Band Chief or Band Vice Chief, or employee of SNDOC is eligible to serve as Manager.

(b) Duties.

- (1) oversee the administrative operation of the Gaming Operations;
- (2) operate a continuous surveillance program at the Gaming Facilities;
- (3) submit monthly reports for each Gaming Facility to the Gaming Enterprise Board, which shall include:
  - i. Balance Sheets;
  - ii. Revenue Statements;
  - iii. Statement of Changes in Cash Flow;
  - iv. Statement of Retained Earnings;
  - v. Expenses and Expenditures;
  - vi. Liabilities and Debts; and
  - vii. Anything requested by Gaming Enterprise Board;
- (4) enter contracts pursuant to Section 202(c)(3) of Title 8;
- (5) obtain license required under Title 15; and
- (6) comply with all requirements of Title 15 and requests made by the Gaming Enterprise Board.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2016-01, March 5, 2016; amended by TO 2020-12, September 5, 2020.]

**Section 204. Repealed**

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2012-19, October 27, 2012; amended by TO 2016-01, March 5, 2016; repealed by TO 2020-12, September 5, 2020.]

**Section 205. Repealed**

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2016-01, March 5, 2016; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; repealed by TO 2020-12, September 5, 2020.]

**Section 206. Repealed**

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2016-01, March 5, 2016; repealed by TO 2020-12, September 5, 2020.]

## **CHAPTER THREE**

### **SEMINOLE NATION DIVISION OF COMMERCE**

#### **Section 301. Seminole Nation Division of Commerce**

(a) Re-Establishment of SNDOC. Pursuant to the authority vested in the General Council by Article V(a) of the Constitution of the Seminole Nation of Oklahoma to “promote public health, education, and charity and such other services that may contribute to the social and economic advancement of the Members of the Seminole Nation of Oklahoma,” there was previously established and created within the Executive Branch of the Seminole Nation, the Seminole Nation Division of Commerce (“SNDOC”), a governmental agency and instrumentality of the Seminole Nation, which shall continue to serve as the economic development, financial analysis, operations management, Gaming Enterprise management and business creation agency of the Seminole Nation for purposes of promoting, creating, advancing, and supporting the business and economic activities, and fostering the success and profitability of the Nation’s business enterprises in an accountable manner that instills the highest degree of confidence in the integrity of the Nation and the Nation’s business enterprises and activities.

(b) Authorization. In any suit, action, or proceeding involving the validity or enforcement of, or relating to any of its contracts, the SNDOC shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this law.

[HISTORY: Enacted by TO\_\_\_\_.]

#### **Section 302. Status of Agency**

The SNDOC shall continue to be a governmental agency and instrumentality of the Seminole Nation established within the Executive Branch to serve as the economic and business arm of the Seminole Nation and to carry out the provisions of this Act. All enterprises established hereunder shall be agencies and instrumentalities of the Seminole Nation established by resolution of General Council to serve specific economic development and business needs of the Seminole Nation.

[HISTORY: Enacted by TO\_\_\_\_.]

#### **Section 303. Board of Directors**

SNDOC shall be overseen by a Board of Directors which shall be comprised of three (3) members and shall consist of a Chairperson, a Vice-Chairperson, and Recording Secretary. The Principal Chief, and Assistant Chief shall serve as ex officio members of the Board without voting rights, except as otherwise provided in this Act.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011  
\_\_\_\_.]

#### **Section 304. Appointment of Members of Board of Directors**

The Principal Chief shall be responsible for selecting and appointing members to serve on the SNDOC Board of Directors. All Board members shall be subject to confirmation by the General Council. Upon selection of a nominee(s), the Principal Chief shall call a special meeting of the General Council or place on the agenda of its next regular meeting time for General Council to consider the nominee's confirmation. A resolution of the General Council signed by the Principal Chief and attested by the General Council Secretary as to the appointment or reappointment of any Board member shall be conclusive evidence of the due and proper appointment of the Board member. At the first meeting of the Board of Directors, from within its voting members, the Board shall elect the Chairman, Vice-Chairman and Recording Secretary of the Board. Ex-officio members of the SNDOC Board shall not be eligible to serve as Chairman, Vice-Chairman or Recording Secretary except as otherwise provided herein.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

#### **Section 305. Qualifications of Appointed Members of the SNDOC Board**

(a) Basic Qualifications. To be eligible to serve on the Board all appointed members must, at a minimum, possess:

- (1) A post-graduate degree from an accredited college or university in business administration, finance, accounting, banking, finance, law, or other business-related degree program; or
- (2) A Bachelor's degree from an accredited college or university in business administration, finance, accounting, banking, finance or other business-related degree program, plus a minimum of five (5) years of work experience in one or more of the following areas: business administration, business management, accounting, banking, or finance or other business-related field; or
- (3) A Bachelor or Master's degree from an accredited college or university in any other field, plus no less than:
  - (A) Five (5) years of experience as an executive, director, or owner of a successful company, firm, or business with more than 25 employees; or
  - (B) Five (5) years of government experience at a senior supervisory level; or
- (4) A minimum of ten (10) years of successful work experience in a related field, business enterprise, or tribal employment directly related to economic development may be substituted for the qualifications enumerated in subsections (1-3) of this section. Level of advancement and/or business success shall be required consideration for this qualification.

(b) **Seminole Preference.** In selecting candidates for appointment to the Board, the Principal Chief shall accord preference to members of the Seminole Nation possessing the requisite credentials established in this Act in accordance with the definition set forth in Section 104(m) of this Title.

(c) **Limitations on Eligibility.** No person who serves as an elected official of the Seminole Nation, General Council Representative, Band Chief, or Assistant or Vice Band Chief is eligible for appointment to the Board, provided that the Principal Chief and Assistant Chief shall be eligible to serve on the Board, but only in an ex-officio capacity. No employee of the Seminole Nation, SNDOC, or an enterprise administered by SNDOC is eligible for appointment to the Board as a voting member except as otherwise provided herein.

(d) **Private Business Operators.** No Board member shall be barred from serving on the Board because the member operates a private business within the same geographic area of operation of SNDOC or an enterprise subject to its administrative authority, provided that during such member's tenure on the Board neither the member nor any business entity owned in whole or in part or managed, directed, or operated by the member shall transact business with the Seminole Nation or any entity, instrumentality, or enterprise of the Seminole Nation.

(e) **Minimum Age.** To be eligible to serve on the Board a person must have attained the age of twenty-five (25) years by the date of his or her appointment by the Principal Chief.

[HISTORY: Enacted by TO\_\_\_\_.]

### **Section 306. Bond and Insurance Requirements SNDOC Board**

The appointed members of the Board on behalf of and in the name of the Seminole Nation Division of Commerce and the Seminole Nation and also as individual members of the Board shall, within thirty (30) days of appointment, obtain fidelity bond coverage for themselves, in the amount of two million dollars (\$2,000,000.00). In addition thereto, the Board shall provide for adequate fidelity bond for the CEO and CFO of SNDOC and may require any agent, employee, or contractor to post a bond or secure professional liability insurance. Alternately, SNDOC may obtain officer and director liability insurance or umbrella coverage sufficient to cover losses that may incurred as a result of the actions of SNDOC.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

### **Section 307. Terms of Office and Reappointments**

The term of office for appointed Board members shall be four (4) years, provided that as a means of staggering the terms of each member, and for the initial appointments only, the Chairperson shall serve a term of four (4) years; the Vice-Chairperson shall be serve a term of three (3) years; and the Recording Secretary shall serve a term of two (2) years. Upon expiration of the term of office, an appointed Board member shall be eligible for reappointment, and may holdover indefinitely, pending reappointment or replacement. Reappointments shall be made in the same manner as the initial appointment.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

### **Section 308. Vacancies**

(a) In the event of a vacancy in an appointed Board position, such vacancy shall be filled by the appointment of a new member by the Principal Chief, with confirmation by the General Council as set forth in Section 304 of this Title, provided that:

- (1) In the event of a vacancy in the Chairpersonship, the Vice-Chairperson shall temporarily assume the duties of Chairperson; the Secretary shall temporarily assume the duties of the Vice-Chairperson; and the Principal Chief shall select either the Chief Executive Officer or the Chief Financial Officer to serve as Recording Secretary until a new Secretary is appointed.
- (2) In the event of a vacancy in the position of Vice-Chairperson; the Recording Secretary shall temporarily assume the duties of the Vice-Chairperson; and the Principal Chief shall designate the SNDOC CEO, CFO, or a qualified individual to serve as Recording Secretary until a new Secretary is appointed.
- (3) In the event of a vacancy in the position of Recording Secretary, the Principal Chief shall designate the SNDOC CEO, CFO, or a qualified individual to serve as Secretary until a new Secretary is appointed.

(b) Notice to General Council. In the event of any vacancy in an appointed Board position, the Principal Chief shall immediately notify the General Council.

(c) Limitations.

- (1) In no event may an acting designee serve as a voting Member of the Board for more than six months in any calendar year without approval of the General Council by means of a duly approved resolution authorizing an extension of the interim appointment.
- (2) Under no circumstances shall the Principal Chief serve as a voting Member of the Board.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

### **Section 309. Duties of Officers**

(a) Duties of Chairperson. The Chairperson shall be the principal executive officer of the Board of Directors, and shall:

- (1) Set the agenda, call, and preside over all Board meetings;
- (2) Sign and execute all Board approved contracts, resolutions, and other documents or instruments requiring approval of the SNDOC Board of Directors;

- (3) Sign and execute notes, drafts, other orders for the payment of money, or other instruments in which disbursement requires the approval of the Chairman and/or the Board of Directors;
  - (4) Represent the Board before the General Council; and
  - (5) Perform all duties incident to the office of Chairperson and carry out such other duties as may be prescribed by the Board from time to time.
- (b) Duties of Vice-Chairperson. The Vice-Chairperson of the Board shall:
- (1) Attend all meetings of the Board;
  - (2) In the absence of the Chairperson, perform the duties of the Chairperson, and when so acting, shall have all the powers and be subject to all the responsibilities of the office of Chairperson; and
  - (3) Perform all duties incident to the office of the Vice-Chairperson and such other duties as from time to time may be assigned by the Board of Directors or the Chairperson of the Board.
- (c) Duties of Recording Secretary. The Recording Secretary of the Board shall:
- (1) Attend all Board meetings and keep complete and accurate records of all meetings, decisions, and actions of the Board where such minutes shall be timely filed with the General Council Secretary upon the minutes' approval at a subsequent Board meeting;
  - (2) Give or cause to be given all notices required by law;
  - (3) Serve as custodian of the records;
  - (4) Keep the minutes of the Board meetings in an appropriate book set aside and used exclusively for such purpose;
  - (5) Attend to all correspondence and present to the Board of Directors at its meetings all official communications received by the Secretary; and
  - (6) Perform all duties incident to the office of the Recording Secretary and such other duties as from time to time may be assigned by the Board of Directors, the Chairperson or Vice-Chairperson.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

### **Section 310. Compensation and Expenses**

(a) Notwithstanding any other provision of Seminole Nation law, the appointed members of the Board shall be compensated in accordance with this Section. The compensation authorized by this Section is based on the scope of mandatory credentials required for

appointment to the Board, including high minimum standards for age, education, and experience as well as the Nation's critical need to attract Board candidates with such credentials with the requisite knowledge and expertise to achieve the goals and perform the functions required by this Act,

(b) The Chairperson, Vice-Chair and Recording Secretary shall receive an annual stipend of \$10,000 to be distributed quarterly in four equal installments;

(c) All necessary and reasonable expenses of the Board that are directly attributable to travel, conferences or training shall be provided and all directly attributable and reasonable out-of-pocket expenses incurred by Board members in the performance of their official duties and responsibilities shall be promptly reimbursed upon submission of receipts and/or other required documentation.

[HISTORY: Enacted by TO \_\_\_\_.]

### **Section 311. Meetings of the SNDOC Board**

(a) Regular Meetings. The Board shall hold regular monthly meetings at such times, and dates as the Board, in its discretion, concludes are appropriate, provided that an annual schedule of meetings shall be published in the Seminole Nation Tribal newspaper, the Seminole Producer, and on file with the Seminole Nation General Council Secretary. These meetings shall be open to the public with the exception of Executive Session;

(b) Special Meetings. Special meetings of the Board may be called at any time by the Chairperson of the Board; upon request of the Principal Chief; or upon joint request of the Vice-Chairperson and Recording Secretary.

(c) Notice of Regular or Special Meetings. The Board shall deliver written notice to all Board members, ex-officio members and the General Council Secretary, at least ninety-six (96) hours in advance of a proposed meeting, of the date, time, place and purpose of the meeting. For purposes of this Section, notice is deemed delivered seventy-two (72) hours after it is placed in the U.S. mail or inter-office mail. Notice may be hand delivered, or may be delivered via facsimile or email with verification of proof of receipt.

(d) Emergency Meetings. Emergency meeting of the Board may be called at any time with reasonable notice to the Board, ex-officio members and the General Council Secretary. The use of an emergency meeting shall be reserved for only matters that require immediate Board action or acts of force majeure.

(e) Manner and Place of Meeting. The Board of Directors may conduct regular or special meetings through the use of any means of communication by which all directors may simultaneously hear each other. All Board actions taken without a formal meeting shall only be valid if evidenced in writing, signed by the Recording Secretary and included in the minutes of the Board of Directors. The Chairperson may designate the location of meetings, which location may be within or without the Nation's jurisdiction, provided that such meetings shall be held within a reasonable driving distance of Seminole, Oklahoma. Members who cannot appear



personally may appear via telephonic or audiovisual conference so long as regular meetings are open to the public.

(f) Voting. The appointed members of the Board shall have an equal vote in all matters and decisions before the Board. To be effective, any action or decision of the Board shall require an affirmative vote of at least two members of the Board. Any matter or decision not affirmatively approved by at least two appointed Board members shall be deemed to have failed. Upon request, any appointed member of the Board shall be allowed to include a statement of dissent in the minutes of the meeting at any time prior to final approval of the minutes after which time no further revision, amendment or supplementation to the minutes shall be permitted. Abstentions shall not be permitted.

[HISTORY: Enacted by TO\_\_\_\_.]

### **Section 312. Authority, Powers, and Limitations Thereon**

(a) General Powers. The Board of Directors of SNDOC shall have the following general powers which shall be exercised in conformity with the laws and regulations of the Seminole Nation and consistently with the purposes for which the Board is established, including the power to:

- (1) Supervise, direct, manage, and oversee the administrative and such other organizational components of SNDOC as may hereafter be established;
- (2) Employ, supervise and direct the Chief Executive Officer and Chief Financial Officer who shall direct, manage, and oversee the operation of SNDOC and any other organization components of SNDOC that may hereafter be established by the Board; and establish the conditions of their employment pursuant to job descriptions consistent with duties as set forth in Sections 404 and 405 herein;
- (3) Authorize, direct, and oversee the planning, development, and establishment of new businesses and business enterprises as well as expansion of existing enterprises; the acquisition of businesses and business concerns; and the development of products and product lines;
- (4) Establish and supervise the implementation of standard operating policies and procedures compliant with all applicable laws, rules, and regulations subject, where applicable, to the approval of the Seminole Nation or other agency or instrumentality of the Seminole Nation;
- (5) Protect, maintain, and properly distribute all funds, accounts and other property subject to its authority or control or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities hereunder;
- (6) Establish hiring, retention, and employment standards to ensure that SNDOC Employees and the Managers and employees of business

enterprises established by or subject to the administrative authority of SNDOC control are competent and qualified to perform the duties and tasks for which they are employed;

- (7) Establish goals, objectives, and benchmarks to assess and evaluate the financial and operational performance of the business enterprises established by or subject to the administrative authority of SNDOC;
- (8) Use the name “Seminole Nation Division of Commerce” in any of its business activities within or without the territorial jurisdiction, provided that said name is hereby exclusively reserved to the use of the SNDOC;
- (9) Sue in any court in its own name or in the name of a business enterprise established by or subject to its administrative authority of SNDOC, and with the consent of the General Council as expressed by resolution duly adopted, to sue on behalf of the Seminole Nation of Oklahoma by styling the case as “The Seminole Nation of Oklahoma ex. rel. Seminole Nation Division of Commerce;”
- (10) Retain, employ, or contract with professional service providers, including, but not limited to, accountants, attorneys, architects, engineers, and such other professionals as the Board deems necessary to the performance of SNDOC’s mission;
- (11) Direct the CFO of SNDOC to establish and maintain such bank accounts as may be necessary or convenient including checking and savings accounts, savings certificates, certificates of deposit, and any other type of demand time deposit for the SNDOC, although any depository accounts maintained on behalf of the Seminole Nation shall be under the control of the Treasurer pursuant to Title 14 of the Code of laws;
- (12) Engage in any lawful business and take such further actions, not inconsistent with this Act, as are commonly engaged in by public or corporate bodies of this character, as the Board may deem necessary or convenient to effectuate the purposes of the SNDOC, and to exercise any of the powers of a business corporation, subject to the limitations contained in this Act;
- (13) Management, invest, and oversee the undistributed revenues produced by the business enterprises established by or subject to the administrative authority of SNDOC and such other funds entrusted to SNDOC by the General Council or any other office or instrumentality of the Seminole Nation;
- (14) Acquire real and personal property on behalf of the nation or any business enterprises established by or subject to the administrative authority of SNDOC, provided that SNDOC shall not petition the Secretary of the Interior to place any land in trust on behalf of the Seminole Nation without

the express consent of the General Council as authorized by a duly adopted resolution;

- (15) Authorize capital expenditures and the development or construction of physical infrastructure, such as sewers, lagoons, water storage systems; water treatment facilities, access roads, and buildings, for example;
- (16) Execute, as an agency of the Seminole Nation, applications for receipt and administration of federal grants and any other federal applications or contracts for purposes of funding types of activities in which SNDOC may engage, provided that SNDOC shall notify the Principal Chief of its intent to apply for any federal grants and activities at least thirty (30) days prior to the application deadline, and if there is any conflict with an application for the same grant or contract by another agency of the Seminole Nation, the General Council shall by resolution designate the agency that is authorized to submit the application; provided further that all awards for federal grants and contracts shall be reported to the General Council and shall be subject to monitoring by Seminole Nation personnel responsible for monitoring federal grants and contracts;
- (17) Present recommendations to the General Council regarding the distribution of net profits or dividends generated by business enterprises and undertakings in light of the needs of the Nation's business enterprises in relation to improvements, expansions, maintenance and repairs; equipment; and land acquisitions, among such other needs as the Board may identify;
- (18) Request from the General Council each year through its Annual Plan of Operation, or otherwise, authority to retain a percentage of annual net profits or income of any or all of the Nation's business enterprises or such other amount as may be proposed, provided that:
  - (A) Such request is accompanied by a written justification supported by sound business principles explaining the proposed use(s) and purpose(s) for such proposed retention of profits;
  - (B) Upon approval of the General Council, the retained funds shall be deposited in the SNDOC Economic Development Fund or in such other fund as may be authorized, and the remainder of the net profits of the enterprises shall be deposited in the Seminole Nation General Fund for distribution by the General Council to the various governmental offices and agencies of the Nation to provide essential governmental functions and services pursuant to the General Fund Budget approved by the General Council; and
- (19) Enter into agreements, contracts, business enterprises and undertakings with any governmental agency, federal, state, local, or tribal or with any

person, partnership, corporation or other legal entity to effectuate the purposes of SNDOC, and to agree to any conditions attached to federal financial assistance;

- (20) Lease to the Seminole Nation or to third parties the interests in land leased or assigned to the use of the SNDOC to the extent provided by law, provided that SNDOC may not execute a lease of tribal land leased or assigned to its use for a period exceeding the term of the original lease or assignment of the land to the SNDOC, absent:
  - (A) The consent of the Seminole Nation General Council by duly enacted resolution; and
  - (B) If required by federal law, approval of the Interior Secretary.
- (21) Do any and all things necessary or desirable and not prohibited to secure the financial aid or cooperation of the Federal government or private sources of capital in the undertaking, construction, maintenance, or operation of any project of the SNDOC, subject to the limitations contained in this Act.

(b) Limitations on the Board's Authority. The Board is not authorized to and shall not itself nor shall it allow any agent or employee of SNDOC, including agents or employees of any enterprise subject to its authority:

- (1) Assume any contractual obligation for a term exceeding seven (7) years without the approval of the Seminole Nation General Council by duly enacted resolution;
- (2) Enter into any lease agreement, whether as lessor or lessee, for term exceeding seven (7) years without the approval of the Seminole Nation General Council by duly enacted resolution, and if necessary, the approval of the Secretary of the Interior, without the approval of the Seminole Nation General Council by duly enacted resolution, as limited below;
- (3) Purchase real property in an amount exceeding three million dollars (\$3,000,000,000) without the approval of the Seminole Nation General Council by duly enacted resolution as limited below;
- (4) Borrow money or make, accept, endorse or issue bonds, debentures, promissory notes, mortgages, or security agreements or any other instrument of indebtedness or guaranty over one million dollars (\$1,000,000.00) without the approval or ratification of the Seminole Nation General Council by duly enacted resolution;
- (5) Waive or purport to waive any of the privileges or immunities of the Seminole Nation, including its sovereign immunity from suit; borrow or lend money or purport to borrow or lend money on behalf of any

instrumentality of the Seminole Nation other than the Seminole Nation Division of Commerce, or to grant or permit or purport to grant or permit any right, lien encumbrance or interest in or on any of the assets of the Seminole Nation other than those of SNDOC or a business enterprise subject to its administrative authority; or

- (6) Perform any act inconsistent with the provisions of this enactment or other applicable laws and regulations.

(c) Specific Authority, Powers and Responsibilities of Board.

- (1) Annual Operation Plan. As a means of ensuring fiscal and operational accountability, the Board shall operate under an Annual Plan of Operation, subject to the approval of the General Council, which shall be submitted with and shall include the proposed annual budgets for SNDOC, its organizational components, and each of the enterprises subject to its administrative authority. The Annual Plan shall also contain:

- (A) Revenue projections for each enterprise for the upcoming year;
- (B) Disclosure of any uncorrected material audit exceptions from the prior year and the status of corrective actions taken or in process with an estimated schedule for completion;
- (C) A general summary of significant activities planned for the upcoming fiscal year, provided that the plan shall not specify any particular building or parcel of property to be acquired unless an option to purchase such property has been secured; or the details of any planned improvement, expansion, development, or establishment or acquisition of a new business enterprise if such disclosure will result in an economic disadvantage to the Nation;
- (D) A request for approval for any action or decision requiring the approval of the General Council, including but not limited to any request for the retention of net revenues for purposes of capital improvements, expansions, development, re-investment, or other business purposes;
- (E) A brief status report in relation to any lawsuit(s) filed by or against SNDOC or any enterprise subject to its administrative authority;
- (F) A brief summary of any reasonably foreseeable event, circumstance, or matter that may or will affect the profitability of enterprises under the administrative authority of SNDOC; and
- (G) Any other information the Board deems appropriate to bring to the attention of the General Council.

- (2) Annual Report. In addition to its monthly and quarterly financial reports, the Board shall provide an Annual Report to the General Council at the end of each fiscal year in addition to monthly and quarterly financial reports for each enterprise subject to the administrative authority of SND OC. The Annual Report shall include for each enterprise:
  - (A) Balance Sheets;
  - (B) Revenue Statements;
  - (C) Statement of Changes in Financial Position; and
  - (D) Statement of Retained Earnings, if any.
- (3) Quarterly Report. The Board shall provide a Quarterly Report to the General Council at the end of each fiscal quarter and prior to any General Council quarterly meeting in addition to monthly and annual financial reports for each enterprise subject to the administrative authority of SND OC. The Quarterly Report shall include for each enterprise:
  - (A) Balance Sheets;
  - (B) Revenue Statements;
  - (C) Expenses and expenditures in relation to actual budgeted line items; and
  - (D) Liabilities and outstanding debts.
- (4) Monthly Report. The Board shall provide a Monthly Report to the addition to quarterly and annual financial reports for each enterprise subject to the administrative authority of SND OC. The Monthly Report shall include for each enterprise:
  - (A) Revenue Statements; and
  - (B) Expenses and expenditures in relation to actual budgeted line items;
- (5) Special Report. Upon request of the General Council, the Board shall provide a written report and/or orally supplement the information contained in the Annual Report and respond to any questions posed by members of the General Council, provided that such special report may be conducted in a closed executive session in order to preserve any economic advantage to the Nation and shield the Nation from any harms that the public disclosure of such information may produce.

- (6) Standards, Policies, and Procedures. As a means of ensuring the effective and efficient operation of the Nation's business enterprises and activities, and to ensure compliance with all applicable laws, rules, regulations, compact terms, and the policies of the Nation, the Board, subject to any requirements for review and approval by the Seminole Nation General Council, shall establish or approve:
- (A) Standards of conduct for all Managers, staff and employees of SNDOC, its components, and enterprises subject to its administrative authority, subject to any approvals that may be required by law, including, but not limited to mandatory procedures for the reporting of theft or other wrongdoing by patrons or employees and policies governing the courteous treatment of patrons as well as such other policies and procedures determined necessary and appropriate by the Board;
  - (B) Personnel policies and procedures governing hiring, supervision, management, promotion, disciplining and/or termination of staff and employees of the Board as well as enterprise Managers, staff and employees, including provisions for employment appeals and grievances filed by such Managers, staff and employees;
  - (C) Standards for the proper maintenance of buildings, sidewalks, driveways, and grounds;
  - (D) Procurement policies and procedures establishing appropriate levels of authority for the approval and execution of contracts for the purchase of goods and services;
  - (E) Accounting policies and procedures and related standards applicable to all aspect of the financial management of the enterprises subject to the administrative authority of SNDOC; and
  - (F) Such other operating policies and procedures the Board deems necessary for the effective management and operation of the Nation's enterprises or which may be otherwise required by law or tribal-state compact.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2014-04, March 18, 2014.]

## **CHAPTER FOUR SND OC OPERATIONS**

### **Section 401. SND OC Operations**

The Central Services Center is hereby dissolved

[HISTORY: Enacted by TO 2007-15, November 13, 2007; amended by TO 2011-11, April 30, 2011; effective October 1, 2011.]

### **Section 402. Purposes**

The purposes of SND OC are as follows:

(a) Promote Economic Development, Business Analysis, Budget and Audit Services for SND OC and the enterprises of the Nation. To increase the Nation's economic capacity and productivity through the retention of highly qualified and experienced professionals with the necessary expertise and competence to provide research, planning, development, and other professional services for SND OC as well as financial, accounting, and other administrative support services to SND OC and the Nation's business enterprises;

(b) Enhance Performance. To provide a central delivery system for the performance of certain core administrative functions common to each of the Nation's business enterprises carried out by experienced professionals with the requisite qualifications and expertise to perform at a high level of competence;

(c) Capture Economic Efficiencies. To increase the level of expertise and professionalism available within SND OC and to each of the Nation's business enterprises while simultaneously reducing each enterprise's staffing levels and effecting savings without sacrificing productivity or lowering performance standards;

(d) Increase Accountability. To effect a clear and distinct segregation between the operational, analytical, economic development and gaming functions of both SND OC and each enterprise requiring administrative support in a manner consistent with a proper internal control system which serves to mitigate the potential for financial mismanagement and/or wrongdoing;

(e) Increased Control by the Nation. To increase the Nation's control over the finances of its enterprises and its capacity to identify and appropriately respond to adverse conditions while simultaneously minimizing political involvement in the management and operational affairs of its enterprises and removing, to the maximum extent practicable, political considerations in business and management decisions through the centralization of the financial, analytical, business development, and audit functions of SND OC and each enterprise within SND OC; the retention of highly qualified and experienced professionals to administer its financial and business affairs; and requiring the development and implementation of strong internal controls and mandatory reporting requirements.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]



#### **Section 403. SNDOC Chief Executive Officer and Chief Financial Officer**

(a) Organizational Structure. The day-to-day affairs of SNDOC shall be managed by the Chief Executive Officer, who shall report concurrently to the SNDOC Boards of Directors and to the Principal Chief. The Chief Executive Officer shall have supervisory authority over all SNDOC operations and business enterprises of the Nation excluding the Gaming Enterprise.

(b) Chief Executive Officer. The Chief Executive Officer shall be selected and approved by the SNDOC Board of Directors.

(c) Chief Financial Officer. The Chief Financial Officer and Division Directors shall be selected by the Chief Executive Officer and approved by the Board of Directors of SNDOC.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

#### **Section 404. Chief Executive Officer**

(a) Responsibilities and Authority. The Chief Executive Officer shall have supervisory authority over the operational departments of SNDOC.

(b) The Chief Executive Officer shall have the power and authority to bind SNDOC by agreement so long as such individual agreement does not exceed \$50,000 per year and has been anticipated as an expenditure or within a category of expenditures that has been approved within the SNDOC budget appropriated by General Council.

(1) Contracts Exceeding \$50,000.00. Any purchase or contract exceeding Fifty Thousand Dollars (\$50,000.00) in value must be subject to the fiscal services enterprise purchasing and procurement policies and procedures.

(2) Contracts Exceeding \$1 Million. Any purchase or contract exceeding One Million Dollars (\$1,000,000.00) in value must be:

(A) Approved by the General Council by a duly enacted resolution or authorized by the General Council in the budget for SNDOC; or if approved in the Plan of Operation by the General Council; and

(B) Subject to the purchasing and procurement policies and procedures.

(c) Duties. Duties of the Chief Executive Officer shall include but are not limited to:

(1) Directing the day-to-day affairs of SNDOC;

(2) Supervising the implementation of all policies and procedures related to the operational activities and functions of SNDOC;

(3) Coordinating functions of business development, business analysis, budget and audit and in the preparation of the Plan of Operation and budget;

- (4) Providing guidance, support, advice and assistance to the Managers of the enterprises and Boards of Directors requiring SNDOC's administrative support;
- (5) Establishing teams and supervising employees for special joint projects, activities and functions requiring multi-disciplinary expertise, such as the planning, development, and establishment of new enterprises; construction projects; and strategic planning;
- (6) Entering into agreements, contracts, business enterprises and undertakings with any governmental agency, federal, state, local, or tribal or with any person, partnership, corporation or other legal entity to effectuate the purposes of SNDOC, and to agree to any conditions attached to federal financial assistance;
- (7) Preparation of Comprehensive Budget and Plan of Operation. As a means of ensuring fiscal and operational accountability, the SNDOC and each enterprise shall operate within the financial constraints of the Comprehensive Budget and Plan of Operation, subject to the approval of the General Council, which shall be submitted with and shall include the proposed annual budgets for SNDOC including the Administrative Division, and each business enterprise. The Operation Plan shall also contain:
  - (A) Revenue projections for each enterprise for the upcoming year;
  - (B) Disclosure of any uncorrected material audit exceptions from the prior year and the status of corrective actions taken or in process with an estimated schedule for completion;
  - (C) A general summary of significant activities planned for the upcoming fiscal year.
  - (D) A request for approval for any action or decision requiring the approval of the General Council, including but not limited to any request for the retention of net profits for purposes of capital improvements, expansions, development, re-investment, or other business purposes;
  - (E) A brief status report in relation to any lawsuit(s) filed by or against SNDOC or any enterprise requiring administrative support;
  - (F) Any other information the Chief Executive Officer deems appropriate to bring to the attention of the General Council.
- (8) Preparation of Special Reports. Upon request of the General Council, the Chief Executive Officer shall supplement the information contained in the Operation Plan and respond to any questions posed by the General

Council, provided that such special report shall be conducted in a closed executive session in order to preserve any economic advantage to the Nation and shield the Nation from any harms that the public disclosure of such information may produce. The reports presented in executive session may include:

- (A) Balance Sheets;
  - (B) Income Statements;
  - (C) Statement of Changes in Financial Position; and
  - (D) Statement of Retained Earnings, if any.
- (9) Shall require subordinate employees with supervisory or managerial authority to report at least monthly and in writing upon request.
- (10) Performing all other duties, functions, and activities incident to the position of CEO or as may be required by the Principal Chief or General Council.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

**Section 405. Chief Financial Officer and Departmental Directors**

(a) Selection. The Chief Financial Officer and Department Directors shall be selected by the Chief Executive Officer and approved by the Board of Directors of SNDOC.

(b) Responsibilities and Authority. The Chief Financial Officer and any appointed Department Directors shall serve in the capacities outlined in this Title. The Chief Financial Officer shall have the authority to bind SNDOC by agreement so long as such individual agreement does not exceed \$50,000 per year and has been anticipated as expenditure or within a category of expenditures that has been approved within the SNDOC budget appropriated by General Council.

(c) Reporting. The CFO shall make a monthly written report to the Board of all balance sheets, revenues and liabilities. The CFO shall require subordinate employees with supervisory or managerial authority to report at least monthly and in writing upon request.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

**Section 406. Organization of SNDOC**

SNDOC shall initially be comprised of two (2) departments, each of which may be directed by a Department Director in accordance with the following (except that one or more departments may be combined under the authority of a single Department Director and/or the Chief Financial Officer as determined by the SNDOC Board of Directors). SNDOC shall be divided into the following sectors:

(a) Business Analysis Department. The Business Analysis Department is responsible for:

- (1) Establishing economic performance standards and benchmarks, assessing financial performance and economic productivity of the Nation's enterprises and investments;
- (2) Financial planning and analysis, including the assessment of potential investments, expansion, and the financial implications of other managerial or operational actions or decision;
- (3) Advising the Chief Executive Officer, the Chief Financial Officer, Division Directors and enterprise Managers on all financial matters;

(b) Business Development Department. The Business Development Department is responsible for:

- (1) Preparing short, intermediate, and long-term strategic planning for the Nation's business enterprises and economic development;
- (2) Providing technical plans and/or supervising the work of contractors, such as architects, engineers, designers, landscapers, surveyors, cartographers, builders, and other technical service providers;
- (3) Working closely with the CEO and CFO in the preparation of the technical aspects of the Plan of Operation;
- (4) Working closely with the enterprise Managers in evaluating bids, proposals, and contracts and providing advice in relation to purchases of materials and supplies for construction, maintenance and repairs;
- (5) Conducting or causing to be conducted all necessary technical studies, reports, evaluations, and information related to planned development activities;
- (6) Acting as project administrator in relation to construction activities;
- (7) Advising the Chief Executive Officer, and enterprise Managers with regard to issues related to the quality of materials, the performance of contractors and subcontractors, and monitoring deadlines for performance; and

[HISTORY: Enacted by TO 2010-08, April 30, 2011; effective October 1, 2011.]

**ARTICLE II**  
**SEMINOLE ENTERPRISES COMMON OPERATING PROVISIONS**  
**CHAPTER FIVE**  
**STANDARDS OF CONDUCT**

**Section 501. Indemnification**

(a) Indemnification by Gaming Enterprise and SNDOC. The Gaming Enterprise and SNDOC shall:

- (1) Indemnify, save and hold harmless the Nation and its elected officials from any and all claims arising out of the actions of the Gaming Enterprise or SNDOC and/or any enterprise created by or subject to its administrative authority in which an elected official of the Nation is a named party solely by reason of his or her position as an official of the Nation;
- (2) Defend at its own cost and expense, with the revenue of the subject enterprise, any action or proceeding commenced for the purpose of asserting any claim arising out of the business activities of any enterprise created by or subject to the administrative authority of the Gaming Enterprise or SNDOC unless the enterprise does not have sufficient revenue to cover such expense, in which case the appropriate agency may advance such costs from its available funds or seek a supplemental appropriation from the General Council in which case, the subject enterprise shall be required to reimburse any such advance at such time as sufficient revenues become available; and
- (3) Reimburse the Nation for any expense incurred by the Nation to defend any such claims.

(b) Hold Harmless. The Gaming Enterprise and SNDOC may by resolution indemnify, save and hold harmless the Executive Branch, members of the Boards, Gaming Enterprise Managers, or employees of each agency or any business enterprise created or subject to the administrative authority of either agency; or any employee acting at the Executive Branch, Gaming Enterprise Managers, or Board's official direction, if any one of them is named a party or is threatened to be made a party in any civil action or proceeding solely by reason of his or her official position or employment status, against expenses, including attorneys' fees, judgments, fines, and amounts paid in connection with such action, suit or proceeding, if, in the judgment of the Executive Branch or Board, no reasonable person would have cause to believe that such conduct was unlawful or otherwise improper; provided, however, that no indemnification shall be provided to any person who is:

- (1) Adjudged to be civilly liable for gross negligence or intentional misconduct;

- (2) A named defendant in any criminal prosecution or convicted of any criminal violation of tribal, state or federal law;
- (3) Subject to any civil action, proceeding, or sanction by the Seminole Nation Gaming Agency;
- (4) Subject to the removal proceeding set forth in Section 503 of this Act; or
- (5) Named in a civil action brought by the Seminole Nation or any instrumentality of the Seminole Nation against such person.

[HISTORY: Enacted by TO 2007-15, November 13, 2007; amended by TO 2011-11, April 30, 2011; effective October 1, 2011; amended by TO 2016-01, March 5, 2016.]

## **Section 502. Standards of Conduct**

(a) General. Board members, the Executive Branch and appointed Gaming Enterprise Managers shall at all times behave honorably and in a manner that reflects favorably on the Nation, its agencies, and its business enterprises and activities;

(b) Best Interest of Seminole Nation. Board members, the Executive Branch and appointed Managers shall pursue, protect, and advance the best interests, needs, and welfare of the Seminole Nation and shall subordinate their personal interests; the interests of their friends, immediate family, and their business interests to the interests of the Nation by avoiding conflicts of interest and perceived conflicts of interest

(c) Conflicts of Interest. During a Board member's, Gaming Enterprise Manager's or Executive Branch member's tenure and for one (1) year thereafter, the individual shall not voluntarily acquire any interest, direct or indirect, in any matter or in any property included or planned to be included in transactions of the Gaming Enterprise Board, Sndoc, the Nation, or any instrumentality or enterprise of the Nation nor shall a Board member, Gaming Enterprise Manager or Executive Branch member participate in any action or decision of the Board in any matter in which he or she has a personal or pecuniary interest. A conflict of interest shall be deemed to exist when a Board member, Gaming Enterprise Manager or Executive Branch member or any profit-making entity in which one of these individuals or a member of his immediate family is an officer, partner or principal stockholder:

- (1) Is a party to or receives any compensation from any real estate transaction with the Gaming Enterprise, Sndoc, the Nation or any instrumentality or enterprise of the Nation;
- (2) Receives any consideration from the Gaming Enterprise, Sndoc, the Nation, or any instrumentality or enterprise of the Nation, other than the compensation to which he or she is entitled as a member of the Board, Gaming Enterprise Manager or Executive Branch member;

- (3) Directly or indirectly buys or sells goods or services to, or otherwise contracts with the Gaming Enterprise, SNDOC, the Nation, or any instrumentality or enterprise of the Nation.

(d) Notice and Recusal. In the event of a conflict of interest, the affected Board member, Gaming Enterprise Manager or Executive Branch member shall promptly disclose the nature of the conflict in writing to the Board or Executive Branch, as appropriate, and, thereafter, shall recuse him or herself from participating in any action or decision where such conflict is present.

(e) Waiver of Indirect Conflicts. If the affected Board member, Gaming Enterprise Manager or Executive Branch member has promptly and fully disclosed all facts and circumstances giving rise to a conflict of interest and the individual's conflict of interest is indirect, the unaffected Gaming Enterprise Manager, Board members or Executive Branch member, outside the presence of the affected Managers/members/member, may determine whether a waiver of the conflict is in the best interest of the Nation and may waive the conflict and proceed with the transaction if:

- (1) A more advantageous transaction or arrangement is not reasonably possible under circumstances not producing an indirect conflict of interest and the proposed transaction or arrangement is fair and reasonable in the opinion of the unaffected Gaming Enterprise Manager(s)/ Executive Branch member/members of the Board; or
- (2) The subject transaction presenting the indirect conflict of interest was the result of a formal sealed bid process sponsored by the affected agency and the bid offers the most advantageous terms.

(f) Indirect Conflicts of Interest. For purposes of this provision, an indirect conflict of interest exists where a proposed transaction involves an immediate family member, other than the Gaming Enterprise Manager/Executive Branch member/Board member's spouse, a close personal friend, or business associate of the affected Manager/Executive Branch member/Board member or a business entity owned in full or in part by such persons.

(g) Waiver Unavailable for Direct Conflicts of Interest. Under no circumstances may the Board or the Executive Branch waive a direct conflict of interest of one of its Managers/members/members or transact any business with any business entity owned in whole or in part; or managed, directed, or operated by a Manager/Executive Branch member/Board member or his or her spouse.

(h) Prohibited Conduct. A member of the Board, Manager or Executive Branch member shall not:

- (1) Exploit or misuse his or her position for personal gain of improper motives or improperly use the Nation's resources for private or personal gain or benefit;

- (2) Attempt to influence the actions or decisions of the General Council or any instrumentality of the Nation outside official processes; provided that, because the Executive Branch as a political office is inherently political in nature, this provision shall not apply to Executive Branch members;
- (3) Make any unauthorized commitments or promises of any kind purporting to bind the Gaming Enterprise, SNDOC, the Nation, or any instrumentality or enterprise of the Nation;
- (4) Engage in unfair or abusive employment or business practices, such as harassment, coercion, nepotism, favoritism or cronyism;
- (5) Interfere or attempt to interfere in any civil or criminal investigation conducted by an appropriate official having jurisdiction to perform such an investigation or attempt to inappropriately influence any decision of the Seminole Nation Gaming Agency or any judicial body;
- (6) Accept or solicit any gift, gratuity or service with a value of more than \$100 or totaling in the aggregate more than \$500 in any fiscal year from any person or entity transacting or seeking to transact business with the Gaming Enterprise, SNDOC, the Nation or any instrumentality of the Nation; or any enterprise established by or subject to the administrative authority of the Gaming Enterprise or SNDOC;
- (7) Use a credit card or other property for any unauthorized purpose or for personal reasons not authorized by the laws, regulations, or policies of the Nation;
- (8) Engage in any Seminole Nation gaming activity or participate in any promotion conducted by or related to the Seminole Nation Gaming Enterprise;
- (9) Knowingly or intentionally violate any law or regulation of the Seminole Nation; and
- (10) Disclose the Nation's confidential or proprietary or otherwise disclose sensitive information learned as a consequence of his or her position as a Board member that could produce an economic disadvantage to the Nation, the Agencies, or any enterprise established by or subject to the administrative authority of the Gaming Enterprise or SNDOC.

(i) Violations. Any violation of the foregoing provisions of this Section shall constitute misconduct in office and a violation of the public trust which shall subject the party to removal and to any applicable criminal sanctions set forth in Title 6 of the Code of Laws of the Seminole Nation, and make such party liable to the affected Agency for any and all profits of any kind or character which the Board member may have obtained by virtue of this violation of trust.



(j) **Duty to Report Violations.** Where a Board member, Gaming Enterprise Manager or Executive Branch member is aware of or possesses knowledge of any violation of the standards of conduct contained in this Act, any other violation of the laws and regulations of the Seminole Nation, or applicable federal or state laws, or any breach of duty to the Seminole Nation, such Board member, Gaming Enterprise Manager or Executive Branch member shall have a duty to report such violation immediately in writing to the General Council and the Principal Chief, or if the individual who is the subject of the report is the Principal Chief, then to the General Council.

(k) **Duty to Establish Standards of Conduct.** The Board and Executive Branch shall promptly establish standards of conduct for all employees of their respective Agencies and their organizational components which shall be consistent with the standards prescribed herein; and shall further ensure that the Managers of all enterprises established by or subject to the administrative authority of the Agencies operate under appropriate standards of conduct consistent with the standards established herein.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011;  
amended by TO 2016-01, March 5, 2016.]

### **Section 503. Removal of Board Members**

(a) **Removal.** Excepting Gaming Enterprise Managers who shall serve at will at the direction of the Principal Chief, an appointed Board member may be removed at any time on the following grounds:

- (1) **Malfeasance in Office.** Malfeasance refers to wrongful or unlawful conduct which breaches the member's fiduciary duty to the Nation, including the taking of any action not authorized by law; failing to take any action required by law; or otherwise engaging in conduct that exceeds the scope of the member's lawful authority or otherwise violates the laws of the Nation or other laws applicable to the Nation.
- (2) **Neglect of Duty.** Neglect of duty refers to the failure to meet the ordinary standards of care essential to the performance of the member's duties and obligations, including, but not limited to, excessive, unexcused absence from duly called Board meetings; lack of performance; or inattention to duties.
- (3) **Misconduct in Office.** Misconduct refers to improper or unethical conduct in the performance of the member's official duties, including, but not limited to, abuse of authority; dishonest, deceitful, or deceptive practices; unjust enrichment; or any other conduct which reflects negatively on the honor, honesty or integrity of the Seminole Nation.
- (4) **Failure of Gaming Enterprise Board to Secure or Renew the Member's Gaming License.** "Failure to secure or renew the member's gaming license" refers to the denial, suspension or revocation of the member's gaming license by decision of the Seminole Nation Gaming Agency or its

denial of a member's application for renewal due to any condition of ineligibility or unsuitability as determined by the Seminole Nation Gaming Agency; or the failure of the Board member to seek renewal of the member's gaming license in accordance with the provisions of the Seminole Nation Gaming Ordinance.

- (5) Incompetence. Incompetence refers to a demonstrated lack of ability or fitness to discharge the duties for which the member was appointed.
- (6) Without Cause. The General Council may remove an appointed Board member without cause upon a vote of no confidence.

(b) Removal Procedures. The decision of removal of any Board member by the General Council shall be final. Any Board member that is removed shall not be eligible for reappointment to the Board for a period of one-year.

- (1) Initiation of Removal Process. The removal process may be initiated:
  - (A) By the Principal Chief upon written recommendation to the General Council specifying with particularity the grounds for and factual basis for the proposed removal; or
  - (B) By a simple majority of the General Council upon adoption of a resolution authorizing the commencement of the removal process and setting forth in particularity the grounds for and factual basis for the proposed removal; or
  - (C) If the removal process is commenced upon recommendation of the Principal Chief, the General Council shall accord the due consideration to the recommendation in accordance with the procedures set forth in this Section.
- (2) Suspension. Upon commencement of the removal process, the subject Board member shall be suspended from the Board pending a hearing before the General Council and shall surrender to the Principal Chief any and all of the Nation's property in the member's possession, including without limit all keys, telephones, documents, files, computers, thumb drives, data storage devices, passwords to computers, data and accounts and records.
- (3) Notice. The General Council shall notify in writing the subject Board member that the removal process has been initiated specifying with particularity the grounds for and factual basis for the proposed removal and establishing a hearing date, which shall be convened no sooner than fourteen (14) and no later than thirty (30) calendar days from the date of the notice. A copy of the notice shall also be sent to the Principal Chief. Notice may be achieved by personal service or by regular mail delivery to the member's address of record.

- (4) Hearing. On the date set for hearing, the General Council shall convene in special session to conduct a hearing. The General Council may determine whether such hearing will be convened in open or closed session. During the hearing, the subject Board member shall be accorded the right to be present and to testify and or present witnesses or other evidence on his or her behalf. The subject Board member shall also have the right to be represented by legal counsel at his or her own expense. If the removal procedure is initiated by the Principal Chief or otherwise, upon request, the Principal Chief shall be accorded the opportunity to address the Council during any stage of the proceeding and may offer any such information as he or she deems relevant to the General Council's consideration.
- (5) Resolution. At the conclusion of the hearing, the General Council shall decide by a simple majority whether or not to remove the subject Board member. Such decision shall be set forth in the form of a resolution in accordance with the General Council's regular procedure for the adoption of resolutions. The decision of the General Council shall be final.

(c) Summary Removal of Gaming Enterprise Managers / Executive Branch members. Gaming Enterprise Managers and Executive Branch members shall be immediately suspended upon the institution of revocation proceedings by the Seminole Nation Gaming Agency and shall be removed from Gaming Enterprise office duties upon a final decision by the Seminole Nation Gaming Agency to revoke the Manager/member's gaming license in accordance with the standards and procedures set forth in the Seminole Nation Gaming Ordinance or upon the failure of any Manager/member to maintain his or her gaming license in good standing.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011;  
amended by TO 2016-01, March 5, 2016.]

## **CHAPTER SIX**

### **SEMINOLE NATION BUSINESS ENTERPRISES**

#### **Section 601. Administration of Enterprises**

Unless otherwise provided by law, all profit-making business activities shall be organized within an enterprise structure which shall be subject to the authority of the Executive Branch, the SND OC Board and the General Council. Enterprises shall, when possible, contract for the services other business enterprises of the Nation.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011;  
amended by TO 2016-01, March 5, 2016.]

#### **Section 602. Organization of Business Enterprises**

(a)     **Manager.** Each enterprise shall be operated under a manager who shall possess the appropriate knowledge, expertise, and experience in the types of business activities conducted by the enterprise as well as the credentials and qualifications needed to operate and manage the enterprise and its staff. It shall be the responsibility of the appropriate SND OC Board of Directors or the Executive Branch, as appropriate, to establish the qualifications for enterprise Managers based on the overall size, complexity, and business focus of the enterprise.

(b)     **Organization.** Each enterprise shall be appropriately organized according to its size, complexity, and the nature of its business activities. The structure of an enterprise shall not be limited to a single model, but shall be organized so as to maximize operational efficiency and profitability. Approval of the organizational structure and any reorganization thereof, budget, and staffing level shall be the responsibility of the enterprise Manager.

(c)     **Authority of Managers.** Managers of enterprises shall have broad authority to operate and manage each enterprise and substantial deference shall be accorded to the Managers in relation to the day-to-day affairs and management decisions of each enterprise, including personnel decisions, marketing, purchases, and acquisitions, among others, as limited by this Code. The Manager shall also be responsible for handling and accounting for cash and cash transactions and related functions.

(d)     **Accounting, Budget and Finance.** Each enterprise shall operate under an annual budget, which shall be included in the SND OC Comprehensive Budget and Plan of Operation or the Gaming Enterprise Budget, as appropriate. All income, proceeds, and funds, other than such on-hand cash as may be necessary for the operation of an enterprise shall be deposited in a banking account(s) established exclusively for the enterprise, and an accounting system unique to each enterprise and shall be designed and maintained specifically for such enterprise. All operating expenses, including, without limit, debt service, capital expenditures, fees, assessments, and any and all other necessary outlays shall be funded from the income of the enterprise. Where necessary and subject to all requisite processes and approvals as required by this enactment or otherwise by the Board or applicable law, an enterprise may incur debt to finance its projects, plans, and activities.

(e) Establishment of Enterprises; New and Existing Enterprises. Upon recommendation of either the SNDOC Board of Directors or Executive Branch, as appropriate, with approval of the General Council and in accordance with this Chapter, new enterprises may be established. General Council approval of the establishment of an enterprise may be effected by special resolution at any time or by approval of an Annual Plan proposing the establishment of such enterprise.

(f) Trade Names. Any subordinate business entity, concern, facility, or activity may operate under unique brand(s) or trade name(s), provided that all official records, documents, instruments, and accounts shall identify the enterprise to which such subordinate business entity, concern, facility, or activity is attached.

(g) Sovereign Immunity of Enterprises. All enterprises shall be governmental instrumentalities of the Seminole Nation established for the primary purpose of providing revenues to strengthen and enhance the capacity of the Government of the Seminole Nation to operate and provide essential governmental services and programs and to advance health, education and welfare of the Seminole people. Each enterprise of the Seminole Nation shall possess all of the Nation's rights, privileges and immunities concerning federal, state, and local taxes, regulation, jurisdiction, and sovereign immunity from suit, and nothing in this Ordinance shall be deemed a waiver of the sovereign immunity from suit of any enterprise, the Nation or any division or department of the Nation.

(h) Principal Place of Governmental Activity. Each enterprise shall be domiciled within the territorial jurisdiction of the Seminole Nation and operated at such locations as may be appropriate.

(i) Preference of Enterprises. The Nation, SNDOC the Gaming Enterprise and each business enterprise shall have the duty to offer all contracts for goods and services to business enterprise(s) for competitive bids before pursuing other contracts on the open market.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011;  
amended by TO 2016-01, March 5, 2016.]

## **CHAPTER SEVEN**

### **RESTRICTIONS ON TRANSFER OF OWNERSHIP OF SEMINOLE ENTERPRISES AND SUB-ENTITIES**

#### **Section 701. Ownership of Enterprises**

All enterprises, and all assets thereof, shall be wholly-owned by the Seminole Nation of Oklahoma, with the Seminole Nation being the sole Member of each enterprise. Upon approval of the General Council and subject to such terms and conditions as may be established by the General Council, an enterprise may establish sub-entities. A sub-entity may enter into joint ventures or other similar contractual relationships with third parties, provided that under no circumstances shall any enterprise, sub-entity or joint venture pledge any land held in trust for the Seminole Nation or subject any land held in trust for the Seminole Nation to any risk of foreclosure or alienation.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

#### **Section 702. Ownership and Restrictions on Transfer of Ownership**

All enterprises established pursuant to Chapter 6 of this Title shall be wholly owned by the Seminole Nation of Oklahoma. The Bylaws, Operating Agreement or other governing document of each such enterprise shall specifically state that ownership of such entity may not be transferred without approval of the General Council.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

#### **Section 703. Restrictions Against Management Amendment of Governing Documents**

All enterprises established pursuant to Chapter 6 of this Title shall be managed by Boards of Directors, Managers or other directors appointed pursuant to this Title. Any attempt to amend the Bylaws, Operating Agreement or other governing document of any such enterprise to create a management structure not authorized by this Title shall be in violation of law and void.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

#### **Section 704. Ownership and Control of Sub-Entities, Restrictions on Transfer**

A sub-entity established pursuant to this Title may allow ownership of up to 49% of the entity by a party other than the Seminole Nation. A sub-entity must be established by an enterprise of the Nation. The Bylaws, Operating Agreement or other governing document of each such sub-entity shall specifically state that ownership and/or control of the entity in excess of 49% may not be transferred or assigned without prior approval of the General Council.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

## **CHAPTER EIGHT PROCUREMENT**

### **Section 801. Contracts, Purchasing, Procurement**

The Gaming Enterprise and SNDOC shall be responsible to establish and comply with appropriate policies and procedures consistent with the provisions contained in this enactment.

(a) Policy; Restrictions on Contract Term; Sovereign Immunity. In transacting business on behalf of the Seminole Nation, the Gaming Enterprise and SNDOC are acting in a fiduciary capacity and shall have a duty to protect, preserve, and advance the financial interests of the Nation in accordance with a fiduciary standard, and:

- (1) General Principles. In establishing purchasing, contract, and procurement policies and procedures, the Gaming Enterprise and SNDOC shall strive to secure the most advantageous terms by abiding with principles of free and open competition, provided that either Agency may accord Seminole Preference in any transaction in the absence of any direct conflict of interest as set forth in this enactment;
- (2) Gaming and Gaming Related Contracts. In any purchase, contract, or procurement made by or on behalf of the Gaming Enterprise, the vendor, contractor, or supplier shall be licensed by the Seminole Nation Gaming Agency in accordance with the regulations of the Seminole Nation Gaming Agency and the Nation's compact with the State of Oklahoma before any funds may be disbursed to such vendor, contractor, or supplier;
- (3) Gaming Contracts; Mandatory Notice. All gaming and gaming related contracts shall contain the following notice:

***All persons or entities transacting business with the Seminole Nation Gaming Enterprise for goods and/or services of a value exceeding \$25,000.00 and all vendors of gaming equipment, supplies, or services are required to be licensed by the Seminole Nation Gaming Agency. This contract shall not be enforceable unless and until the required license is granted. It shall be your responsibility to secure and complete the necessary application forms; to submit all requisite applications; pay any necessary licensing fees; and secure the requisite license prior to the commencement of this Contract. Failure to comply with this provision shall be deemed a material breach of this Contract and shall relieve the SNGE of all obligations under this Contract.***

- (4) No Waiver of Sovereign Immunity of Seminole Nation. Unless otherwise authorized in a duly adopted resolution of the General Council, no contract with any person or entity of any kind shall waive or purport to waive the sovereign immunity from suit of the Seminole Nation even on a limited basis, and any contract purporting to do so shall be null and void and

without any force or effect. If the signature of any Employee or employee of the Gaming Enterprise, SNDOC or the Manager or employee of an enterprise should appear on any contract containing such limited waiver, such person shall be culpable of official misconduct.

- (5) Limited Waiver. No contract with any person or entity of any kind shall grant a general waiver of the Gaming Enterprise or SNDOC's sovereign immunity from suit, but a contract may contain a limited waiver of the sovereign immunity from suit of the Gaming Enterprise, SNDOC or an enterprise subject to its administrative authority on a transactional basis.
- (6) Attorney Review; Other Requirements. No contract shall be executed without the prior review of legal counsel if it contains:
  - (A) A provision for a waiver of sovereign immunity from suit;
  - (B) A provision for the management of the Gaming Enterprise or any gaming facility within the Gaming Enterprise;
  - (C) A term providing for a fee based on a percentage of the net or gross revenues of the Gaming Enterprise or grants any person or entity the right to participate in the revenue stream of the Gaming Enterprise for any period of time;
  - (D) An arbitration provision;
  - (E) A provision which provides for the disclosure of confidential information of employees or customers of the Gaming Enterprise, SNDOC, or members of the Seminole Nation;
  - (F) A contract value in excess of \$50,000 annually; or
  - (G) A contract term in excess of 7 years.
- (7) Prohibitions. The Gaming Enterprise and SNDOC shall be prohibited from entering into any contract that:
  - (A) Grants, conveys, or transfers an ownership interest, other than a leasehold estate, in any real property of the Seminole Nation or any enterprise or instrumentality of the Seminole Nation whether owned in fee or held in trust by the United States for the benefit of the Seminole Nation of Oklahoma; or real property of the Seminole Nation; or in any trust or other asset of the Seminole Nation, including any business enterprise; and
  - (B) Allows the execution of a judgment for damages against any land or real property of the Seminole Nation or any enterprise or instrumentality of the Seminole Nation whether owned in fee or



held in trust by the United States for the benefit of the Seminole Nation of Oklahoma; or any trust asset of the Seminole Nation.

(b) Scope of Contract Amount. The specific procedures required in relation to purchasing, contracts, and procurements shall be based on the size and scope of the contemplated transaction and shall accord with the following requirements:

- (1) Small Contracts. A small contract is one in which the aggregate value of the transaction is fifty thousand dollars (\$50,000.00) or less:
  - (A) The Manager of an enterprise shall have authority to execute a contract or authorize a purchase, subject to any conditions or restrictions contained in this enactment, provided that the value of such contract does not exceed five thousand dollars (\$5,000.00) and provided the term of such contract is no more than one (1) year;
  - (B) The Manager of the Gaming Enterprise or the CEO or CFO of SNDOC shall have authority to execute contracts on behalf of their respective Agencies or an enterprise subject to its authority in any amount up to fifty thousand dollars (\$50,000.00) and for which the term does not exceed one (1) year; and
  - (C) Arms-length purchases of goods, equipment, or supplies, except gaming equipment and supplies, of a value less than two thousand five hundred dollars (\$2,500.00) may be exempted from the purchasing and procurement policies and procedures at the discretion of the Board or Executive Branch, as appropriate.
- (2) Contracts Exceeding \$50,000.00. Any purchase or contract exceeding fifty thousand dollars (\$50,000.00) or for which the term exceeds one (1) year must be:
  - (A) Approved by the Board or Executive Branch, as appropriate, and executed by the Chairperson or Acting Chairperson or the Principal Chief or his or her designee; and
  - (B) Subject to the Seminole Nation purchasing and procurement policies and procedures.
- (3) Contracts Exceeding \$1 Million. Any purchase or contract exceeding one million dollars (\$1,000,000.00) in value must be:
  - (A) Approved by the General Council by a duly enacted resolution or otherwise authorized by the General Council in the budget for the Gaming Agency, SNDOC or an enterprise as appropriate and subject to its administrative authority; or if approved in the Annual Plan of Operation by the General Council; and

- (B) Subject to the Seminole Nation purchasing and procurement policies and procedures.
- (4) Signatory for Contracts exceeding \$1 Million. Upon the approval of the General Council, the Chairperson or Acting Chairperson or Principal Chief or his or her designee shall be authorized to execute any contract, including one exceeding one million dollars (\$1,000,000.00) in value.
- (5) Purchasing and Procurement Policies and Procedures. SDOC shall adopt and follow the Nation's purchasing and procurement procedures as codified at Chapter 8 of the Title 14 of the Seminole Nation Code of Laws as may be amended from time to time. Additionally, all contracts with a value exceeding fifty thousand dollars \$50,000 or a term of one (1) year, or as otherwise required by Section 801 of this Chapter, shall be subjected to legal review.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011;  
amended by TO 2016-01, March 5, 2016.]

#### **Section 802. Accounting Services**

The Gaming Enterprise, SDOC and each enterprise shall be responsible for the following activities:

- (a) Providing for its own accounting services in accordance with Generally Accepted Accounting Principles;
- (b) Preparing all financial statements and maintaining all accounts, books, and other financial records;
- (c) Handling all tax matters, including the preparation of tax returns, compliance with all IRS reporting requirements and responsibilities; and
- (d) Managing all payroll functions and services.

Such Accounting services may be provided in-house by employees of the agency or entity or may be provided by an outside accounting firm. If an outside accounting firm is used, that firm must be approved by the Board of Directors overseeing the entity requiring accounting services. Hiring shall be based on criteria set by the Board and submission of proposals by at least three (3) interested firms. The price of services will be considered in selecting an outside accounting firm but shall not be the only criteria for selection.

[HISTORY: Enacted by TO 2011-11, April 30, 2011; effective October 1, 2011.]

**TITLE 9  
EDUCATION  
INDEX**

<b>TITLE 9 EDUCATION INDEX .....</b>	<b>i</b>
<b>TITLE 9 EDUCATION .....</b>	<b>1</b>
<b>CHAPTER ONE EDUCATION COMMITTEE .....</b>	<b>1</b>
Section 101. Education Committee; Qualification; Appointment; Removal.....	1
Section 102. Term .....	2
Section 103. Duties.....	2
Section 104. Education Committee: Compensation. ....	2
Section 105. Education Committee Governed by General Council .....	3

**TITLE 9  
EDUCATION**

**CHAPTER ONE  
EDUCATION COMMITTEE**

**Section 101. Education Committee; Qualification; Appointment; Removal**

(a) The Seminole Nation of Oklahoma shall officially recognize an Education Committee, which shall be charged and empowered with the duties and responsibilities listed in Section 103 of Title 9.

(b) The Education Committee shall be a seven (7) member Committee who shall be members of the Seminole Nation, with the exception of Seminole Freedmen.

- (1) The Education Committee shall consist of a minimum of two (2) members of the General Council of the Seminole Nation of Oklahoma, preferably members with experience in teaching or the education profession.
- (2) Committee members who are not Council members shall have experience in teaching or the education profession, two shall have experience in early childhood/head start, and one Committee member shall be currently enrolled at an institution of higher learning.
- (3) The Principal Chief shall appoint the members of the Education Committee, subject to confirmation by the General Council.
- (4) The Principal Chief and Assistant Chief shall be ex officio, non-voting members of the Education Committee.
- (5) At least four (4) official Committee members, including one (1) committee member that is employed as an educator or has experience in early childhood development, shall be in attendance in order to establish a quorum.

(c) The first meeting of the Education Committee, after at least three (3) appointments are confirmed by the General Council, shall be organized by the Principal Chief. At the first meeting of the Education Committee, the members shall select within their membership a Chairman, Vice-Chairman and Recording Secretary.

(d) The Principal Chief of the Seminole Nation of Oklahoma may at any time recall the appointment of any member of the Education Committee for good cause shown, subject to the approval of a majority of the Council.

(e) Voting on agenda items by the Education Committee shall be by roll call vote and shall be recorded by the Recording Secretary.

[HISTORY: Enacted by TO 2008-02, February 19, 2008. Amended by TO 2020-04, March 07, 2020.]

**Section 102. Term**

The term of Education Committee members shall be four (4) years from the date of appointment by the Chief and confirmation of the General Council.

[HISTORY: Enacted by TO 2008-02, February 19, 2008.]

**Section 103. Duties**

The duties of the Education Committee include the following:

- (a) Development of short- and long-range plans for the immediate and future needs of education of the members of the Nation from early childhood through college and beyond, including but not limited to vocational schooling and adult education; and
- (b) Development of a non-profit foundation for education and youth activities of members of the Seminole Nation; and
- (c) Work with education institutions attended by members of the Seminole Nation to achieve increased education opportunities for members and to address shortcomings and complaints by members of the Seminole Nation regarding these educational institutions; and
- (d) Make recommendations for implementation of any agreements between the Seminole Nation and educational institutions such as, but not limited to, the agreement between the National Indian Gaming Commission and the Seminole Nation; and
- (e) Recommend to the General Council further development of laws for the Nation regarding education; and
- (f) Prepare and submit an annual report of activities, findings and proposals for review by the General Council as provided for in Section 105(b) in Title 9; and
- (g) Utilize professional Seminole Nation educators, citizens in the community, and students as an advisory resource to the Education Committee; and
- (h) Perform any additional duties as authorized by the General Council.

[HISTORY: Enacted by TO 2008-02, February 19, 2008. Amended by TO 2020-04, March 07, 2020.]

**Section 104. Education Committee: Compensation**

Title 16, Section 602, in which all members of Committees, Boards and Task Forces of the Seminole Nation receive a stipend of Fifty Dollars (\$50.000) shall apply to persons appointed to the Education Committee who attend the meetings of Committee. If the amount paid to members

of Committees, Boards and Task Forces of the Seminole Nation is modified in Title 16, Section 602, the modifications shall also apply to the Education Committee.

[HISTORY: Enacted by TO 2008-02, February 19, 2008.]

**Section 105. Education Committee Governed by General Council**

(a) It is to be understood and directed that the Education Committee will be extended the fullest and best cooperation of all concerned while in the performance of its duties and will be working in the best interests of the citizens of the Seminole Nation of Oklahoma.

(b) The Education Committee is governed by the General Council and shall submit an annual report of activities, findings and proposals for review at the Quarterly Meeting of the General Council held the first Saturday of September each year.

[HISTORY: Enacted by TO 2008-02, February 19, 2008.]

**TITLE 10  
ELECTIONS  
INDEX**

<b>TITLE 10 ELECTIONS INDEX .....</b>	<b>i</b>
<b>TITLE 10 ELECTIONS.....</b>	<b>1</b>
<b>CHAPTER ONE AUTHORITY; ELECTION BOARD; REVIEW BOARD.....</b>	<b>1</b>
Section 101. Definitions .....	1
Section 102. Computation of Time .....	2
Section 103. Authority .....	2
Section 104. Election Board.....	2
Section 105. Duties of the Election Board.....	3
Section 106. Election Appeals Board .....	4
Section 107. Election Board Assistant.....	4
Section 108. Election Appeals Board Assistant .....	4
<b>CHAPTER TWO VOTERS; REGISTRATION.....</b>	<b>6</b>
Section 201. Voter Qualifications .....	6
Section 202. Registration to Vote.....	6
Section 203. Voter List .....	6
<b>CHAPTER THREE CANDIDATES; FILING .....</b>	<b>8</b>
Section 301. Candidate Qualifications.....	8
Section 302. Filing for Candidacy .....	9
Section 303. Employment of Elected Officials .....	9
<b>CHAPTER FOUR ELECTIONS.....</b>	<b>10</b>
Section 401. Date and Notice of General Elections.....	10
Section 402. Date and Notice of Special Elections to Fill Chief and Assistant Chief Vacancies .....	10
Section 403. Date and Notice of Special Elections on Constitutional Amendments .....	10
Section 404. Date and Notice of Special Elections to Repeal, Revoke, and/or Replace the Constitution.....	11
Section 405. Polling Locations.....	11
Section 406. Polling Location Committees.....	12
Section 407. Voting Procedure and Ballots for Voting at Polling Locations.....	13
Section 408. Voting Procedure and Ballots for Absentee Voting .....	13
Section 409. Election Returns .....	14
Section 410. Run-off Elections .....	15

Section 411.	Electioneering .....	16
Section 412.	Poll Watchers .....	16
Section 413.	Election Recounts.....	16
Section 414.	Election Appeals; General .....	17
Section 415.	Appeal of Election Board Finding of Candidate Eligibility; Special Procedures.....	18
Section 416.	Appeals Alleging Election Law Violations; Special Procedures .....	19
Section 417.	Conduct of Appeal Hearings .....	19



## **TITLE 10 ELECTIONS**

### **CHAPTER ONE AUTHORITY; ELECTION BOARD; REVIEW BOARD**

#### **Section 101. Definitions**

(a) Candidate. A "Candidate" is a person who has filed to run in an election for elective office in the Seminole Nation of Oklahoma and has been certified by the Election Board.

(b) Complainant. "Complainant" shall mean a person who files a request for an election appeal pursuant to sections 414 through 417 herein.

(c) Confinement. "Confinement" shall mean and include both a physical confinement such as imprisonment or incarceration and legal or moral confinement such as in the case of probationary requirements, restrictions, and/or limitations.

(d) Election Appeals Board. "Election Appeals Board" shall be defined as the Election Appeals Board of the Seminole Nation of Oklahoma, established to hear election appeals pursuant to sections 414 through 417 herein.

(e) Election Board. "Election Board" shall be defined as the Election Board of the Seminole Nation of Oklahoma established pursuant to section 103 herein.

(f) Election Results. "Election Results" shall be defined as the number of votes in favor of each candidate for office; and the number of votes in favor of and opposed to each referendum question.

(g) Election Outcome. "Election Outcome" shall be defined as the determination of the candidate winning an election for office; and the determination of the passage or failure of a referendum question.

(h) Electioneering. "Electioneering" shall mean working actively for or against the election of a candidate. This includes, but is not limited to, wearing clothing or a pin that supports a candidate for office, and/or discussing the election of a candidate with a potential voter. It is not deemed electioneering for a vehicle to display support for a candidate when a voter is voting. However, if a vehicle displays support for a candidate, that person and the vehicle must leave the polling location immediately after the voting process.

(i) Elective Office. "Elective Office" shall mean the office of Chief, Assistant Chief, and General Council Member.

(j) Officers. "Officers" shall mean the Chief, Assistant Chief and General Council Members.

(k) Polling Location. "Polling Location" shall mean a place where voters go to cast their votes in an election.

(l) Nation. "Nation" or "Seminole Nation of Oklahoma" shall mean the federally recognized Indian tribe the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 93-10, April 3, 1993; amended by TO 97-01B, May 10, 1997; amended by TO 2013-17; March 1, 2014; renumbered from Section 100 to Section 101 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2017-03, April 13, 2017.]

#### **Section 102. Computation of Time**

In computing any period of time prescribed or allowed by this Title, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or any other day when the office of the Election Board does not remain open for public business until 4:00 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday or any other day when the office of Election Board does not remain open for public business until 5:00 p.m.

[HISTORY: Enacted by TO 2017-03, April 13, 2017.]

#### **Section 103. Authority**

This ordinance, which shall be known as the "Seminole Nation of Oklahoma Election Code," is established pursuant to Article X, Section 2 and pursuant to Article XIII, Sections 1 and 2 of the Nation's Constitution approved April 15, 1969, as amended and approved March 10, 1989 which provides for the enactment of an ordinance by the General Council to conduct elections for Chief, Assistant Chief and Council members subsequent to the first election, and which provides for the holding of special elections on proposed amendments to the Nation's Constitution. The Seminole Nation of Oklahoma Code shall be effective immediately upon date of its passage. All prior inconsistent legislation of the Nation in effect as of the date of enactment of the Seminole Nation of Oklahoma Election Code is hereby repealed, and shall have no force and effect immediately upon passage of the Seminole Nation of Oklahoma Election Code.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; renumbered from Section 101 to Section 102 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended on April 4, 2017 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 104. Election Board**

The Chief shall appoint an Election Board consisting of three members of the Nation, subject to the approval of the General Council, as provided in Section 3, Article X of the Nation's Constitution. Each member already approved to be an Election Board member pursuant to the terms of the Constitution and serving on the Election Board as of the date of enactment of this law shall not require reconfirmation and shall continue serving until expiration of his term. Thereafter, terms of office shall be for four years. No member of the Election Board shall be an

elected officer of the Nation or an employee of the Nation during his term of office on the Election Board.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; renumbered from Section 102 to Section 103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended on April 4, 2017 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 105. Duties of the Election Board**

The three-member Election Board shall have the responsibility of conducting all general, run-off, and special elections to elect the Chief, Assistant Chief, and Council members of the Seminole Nation of Oklahoma. The Election Board shall also have the responsibility of conducting special elections to amend the Nation's Constitution pursuant to Article XIII, Section 1 of said Constitution. The Election Board shall engage in the following activities in the performance of its responsibilities:

- (a) Elect a Chairman and Secretary from within its membership;
- (b) Maintain a current list of registered and qualified voters, based on information provided by the Enrollment Office;
- (c) Determine the eligibility of all candidates for office pursuant to section 301 herein;
- (d) Determine the number and locations of polling locations;
- (e) Appoint as many assistants as it deems necessary to conduct elections;
- (f) Conduct all elections by secret ballot;
- (g) Issue and count ballots;
- (h) Certify all election results;
- (i) Have the first authority to decide protests;
- (j) Destroy all ballots 60 calendar days after all appeals are final; and
- (k) Engage in any other activities for the performance of its responsibilities as required by the provisions of this act.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 94-9, August 13, 1994; amended by TO 2013-17; March 1, 2014; renumbered from Section 103 to Section 104 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

#### **Section 106. Election Appeals Board**

(a) An Election Appeals Board shall be established to serve in the capacity of a quasi-judicial body to conduct ballot recounts and to hear appeals regarding candidate eligibility pursuant to chapter four herein. The Election Appeals Board shall be composed of five (5) persons appointed by the Chief and confirmed by the General Council at a duly called General Council meeting. The term of office of the Election Appeals Board members appointed shall be for a six month period commencing on April 1 of the year in which a general election is held and ending on September 30 of that year; provided that in the event a special election is called by the General Council, the Election Appeals Board members who sat on the Board during the most recent General Election shall be reinstated as Election Appeals Board members commencing on the date of enactment of the General Council resolution authorizing the special election and continuing for a period of three months after the election date. Election Appeals Board members shall not hold any elective office, shall not be candidates for elective office, shall not be Election Board members and shall not be employees of the Nation. Election Appeals Board members are not required to be members of the Nation.

(b) The Election Appeals Board must meet once prior to the commencement of the candidate filing period for the election in the year in which they are appointed to elect a Chairman, Vice-Chairman and a Secretary from within the Election Appeals Board.

(c) The Chairman and the Vice-Chairman of the Election Appeals Board shall receive all notices from the Election Board relating to any matter that is to be before the Election Appeals Board and the Chairman or the Vice-Chairman if the Chairman is unavailable shall coordinate all meetings of the Election Appeals Board.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 2008-16, July 10, 2008; amended by TO 2013-17; March 1, 2014; renumbered from Section 104 to Section 105 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2017-02, March 16, 2017; amended on April 4, 2017 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 107. Election Board Assistant**

The Election Board may employ a permanent, part-time assistant to assist the Election Board with its administrative duties.

[HISTORY: Enacted by TO 2013-17, March 1, 2014.]

#### **Section 108. Election Appeals Board Assistant**

The Election Appeals Board may employ a temporary, part-time assistant to assist the Election Appeals Board with its administrative duties. To the extent that any appeal does not involve the Election Board Assistant provided for in Section 106 of this Title, then, and in that event, the Election Board Assistant may also act as the Election Appeals Board assistant.

[HISTORY: Enacted by TO 2013-17, March 1, 2014; amended on April 4, 2017 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO VOTERS; REGISTRATION**

### **Section 201. Voter Qualifications**

Every member of the Seminole Nation of Oklahoma as defined in Article II of the Nation's Constitution shall be considered registered and eligible to vote in any general, run-off or special election, provided that he/she is at least eighteen years of age and provided that such person provides sufficient proof of identity in the form of a valid tribal membership card issued to the member by the Nation's Enrollment Office or another form of photo identification issued by a governmental authority. A determination of membership shall be based on the records of the Nation's Enrollment Office. The provisions of this section establishing eligibility to vote have no bearing on inheritance or participation in the distribution of assets in any manner.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-17, June 5, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

### **Section 202. Registration to Vote**

REPEALED

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 94-9, August 13, 1994; amended by TO 00-02, March 4, 2000; repealed by TO 2013-17; March 1, 2014.]

### **Section 203. Voter List**

The Nation's Enrollment Office shall prepare and transmit to the Election Board a preliminary list of qualified voters at least sixty (60) calendar days prior to the election. The list shall contain the name, address, band membership and other identifying information required by the Election Board of each member of the Nation who, on the date of the election, will have reached eighteen years of age. The Enrollment Office shall maintain the list on an ongoing basis and periodically update the list as requested by the Election Board. The Enrollment Office shall prepare and transmit to the Election Board a final voter list for use in the election upon the close of business of the Enrollment Office on the Thursday prior to the election. The Enrollment Office shall also prepare and transmit to the Election Board at least 60 calendar days prior to the election a redacted preliminary voter list containing only the voters' names and band membership. This redacted preliminary voter list shall be available for public inspection at the Election Board's office, and may be maintained and viewable electronically at the discretion of the Election Board. Each candidate for Chief and Assistant Chief shall be entitled to obtain at no cost from the Election Board the unredacted preliminary voter list on paper or computer format, provided that replacement copies either in paper or computer format shall be provided for a cost of \$20.00. Candidates for General Council shall be given an unredacted preliminary voter list of voters in their respective bands at no cost on paper or computer format, provided that replacement copies either on paper or computer format shall be provided for a cost of \$10.00. Payment shall be made payable to the Seminole Nation of Oklahoma Election Board. All requests by a candidate

for an unredacted preliminary voter list shall be made at least ten business days prior to the election. Upon a request by a candidate for an unredacted preliminary voter list, the Election Board shall request the same from the Nation's Enrollment Office, who shall provide the requested list to the Election Board within three (3) business days of request by the Election Board. The list must be provided to the requesting candidate within five business days of the date the request was made.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO No. 93-10, April 3, 1993; amended by TO 97-01B, May 10, 1997; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

## **CHAPTER THREE CANDIDATES; FILING**

### **Section 301. Candidate Qualifications**

(a) Chief: Any enrolled member of The Seminole Nation of Oklahoma who is at least thirty-five (35) years of age and who possesses no less than one-quarter degree Seminole blood may be eligible for the office of Chief.

(b) Assistant Chief: Any enrolled member of The Seminole Nation of Oklahoma who is at least thirty-five (35) years of age and who possesses no less than one-quarter degree Seminole blood may be eligible for the office of Assistant Chief.

(c) Council Member: Any enrolled member of The Seminole Nation of Oklahoma who is at least eighteen (18) years of age and who possesses no less than one-quarter degree Indian blood (this provision of degree of blood shall not apply to Freedmen Council members) may be eligible for a seat on the General Council. Freedman candidates must be at least eighteen (18) years of age and provide documentation of their freedman ancestry.

(d) No person who has been convicted of a felony by a court of competent jurisdiction shall be considered eligible for the offices of Chief, Assistant Chief or General Council member until either pardoned or five years have passed since release from confinement. The Election Board will obtain information from the Oklahoma State Bureau of Investigation and the Nation's Courts in order to certify that this requirement has been met for each candidate, provided that such information shall be destroyed following final certification of election results and following a requested recount or the expiration of the time period allowed for a request for a recount.

(e) No person may run for two or more elected offices (including Chief, Assistant Chief and General Council Member) in the election period. A candidate may only run for one position per each election.

(f) A Three hundred dollar (\$300) filing fee shall be posted with the Nation's Election Board by each candidate for Chief. Such fee shall be in the form of a money order or a certified check payable to the Seminole Nation of Oklahoma Election Board.

(g) A Two hundred dollar (\$200) filing fee shall be posted with the Nation's Election Board by each candidate for Assistant Chief. Such fee shall be in the form of a money order or certified check payable to the Seminole Nation of Oklahoma Election Board.

(h) A Fifty dollar (\$50) filing fee shall be posted with the Nation's Election Board by each candidate for Council member. Such fee shall be in the form of a certified check or money order payable to the Seminole Nation of Oklahoma Election Board.

(i) The Election Board will issue an official letter certifying the eligibility of each candidate or denying said eligibility, within five (5) business days after the close of the filing period. Filing fees will be used by the Nation's Election Board for Election Board funding



purposes pursuant to a budget duly approved by the General Council, and no fees shall be refunded.

(j) Each Council Member candidate running in the general election shall pay a filing fee as set by the Election Board. In the event that no candidate runs for the General Council seat(s) in a particular Band such that the Band must internally nominate and fill the vacancy thus created, the individual(s) so nominated must pay the candidate filing fee set by the Election Board in the same amount as that paid by candidates who run in the general election. Any individual nominated to fill a General Council Band Representative vacancy created during the term between election years shall, upon accepting such nomination, pay, a fifteen (\$15) administrative processing fee to the Election Board.

(k) Any candidate that challenges another candidate's qualification for office must first pay a fifty dollar (\$50) "challenge fee" to the Election Board to cover costs of handling the challenge.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 97-01B, May 10, 1997; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

### **Section 302. Filing for Candidacy**

Candidates shall file their candidacy at the Seminole Nation of Oklahoma Election Board Office during the hours from 8:00 a.m. to 5:00 p.m. daily during a five (5) day filing period commencing on the first Monday in May and ending the following Friday. Commencing with the general election in the year 2021, the candidate filing period shall commence on the third Monday in April and end the following Friday. Each candidate shall pay the fee prescribed for the office for which he seeks election at the time of filing.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 97-01B, May 10, 1997; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017.]

### **Section 303. Employment of Elected Officials**

Pursuant to the policy cited in Title 16, section 908, employees of the Seminole Nation and all of its entities are prohibited from serving as an elected official. Any candidate for elective office who is also an employee of the Seminole Nation may continue employment up until such time as the candidate is sworn-in. Any employee who becomes elected or appointed as an Officer of the Seminole Nation, as defined in Title 10, section 101(i), must resign employment with the Seminole Nation or must decline being sworn-in as an Officer to retain employment. It is the proprietary interest in employment and potential for undue influence that may be exerted either at the Band or General Council level that constitutes bias and conflict of interest.

[HISTORY: Enacted by TO 2013-17, March 1, 2014; amended by TO 2017-03, April 13, 2017; amended by TO 2017-07, April 29, 2017.]

## **CHAPTER FOUR ELECTIONS**

### **Section 401. Date and Notice of General Elections**

General elections shall be held on the second Saturday in July of an election year. The Election Board shall give notice of said election by publication in the Seminole Producer weekly for four consecutive weeks, the first notice to be published at least forty-five (45) calendar days prior to the election date. The notice must include the addresses of all polling locations. The Election Board shall also give notice of said election by publication in a newspaper issued by the Nation, said notice to be published at least once no more than forty-five (45) calendar days prior to the election date. The Election Board may also publish notice at any time prior to the election date in other publications of general circulation, and may use other available media to publicize the election. The Seminole Producer shall be the official news media for election information, dates and registrations.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-03, April 13, 2017.]

### **Section 402. Date and Notice of Special Elections to Fill Chief and Assistant Chief Vacancies**

A special election to fill vacancies in the office of the Chief or Assistant Chief shall be held on a date set by the General Council, provided that such special election is deemed necessary by the General Council pursuant to Article IX, Section 4 of the Constitution of the Seminole Nation of Oklahoma. Notice of a special election called pursuant to this section shall be published in accordance with the requirements of section 401 herein.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended on April 4, 2017 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 403. Date and Notice of Special Elections on Constitutional Amendments**

The Constitution of the Seminole Nation of Oklahoma may be amended by a majority vote of the qualified voters of the tribe who vote in a special election called for that purpose by the Chief of the Nation pursuant to Article XIII of the Nation's Constitution. A special election shall be held on a date set by the Nation's General Council. The date of the special election may coincide with the date of the general election as provided for in section 401 herein. A notice in the form of a resolution duly adopted by the General Council as to the date of an election to adopt or reject any proposed amendment must be given not less than sixty (60) calendar days before the election day. Such notice must include the full text of any proposed amendment and must appear subsequently at fifteen calendar day intervals in the Seminole Producer and in at least one other prominent newspaper published or distributed within Seminole County including, without

limitation, the Shawnee News-Star. The Election Board shall also include in the notice the addresses of all polling locations. The Election Board shall also give notice of said election by publication in a newspaper issued by the Nation, said notice to be published at least once no more than sixty (60) calendar days prior to the election date. The Election Board may also publish notice at any time prior to the election date in other publications of general circulation, and may use other available media to publicize the election. The Seminole Producer shall be the official news media for election information and dates.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2008-16, July 10, 2008; amended by TO 2013-17; March 1, 2014; amended by TO 2017-03, April 13, 2017.]

**Section 404. Date and Notice of Special Elections to Repeal, Revoke, and/or Replace the Constitution**

The Constitution of the Seminole Nation of Oklahoma may be repealed, revoked, and/or replaced by a majority vote of the qualified voters of the tribe who vote in a special election called for that purpose by the Chief of the Nation. A special election shall be held on a date set by the Nation's General Council. Such notice must include the full text of the replacement Constitution or otherwise identify that the election seeks to repeal or revoke the Constitution. The notice in the form of a resolution duly adopted by the General Council as to the date of any election to repeal, revoke, and/or replace the Constitution must be given not less than sixty (60) calendar days before election day and appear subsequently at fifteen calendar day intervals in the Seminole Producer and in at least one other prominent newspaper published or distributed within Seminole County including, without limitation, the Shawnee News-Star. The Election Board shall also give notice of said election by publication in a newspaper issued by the Nation, said notice to be published at least once no more than sixty (60) calendar days prior to the election date. The Election Board may also publish notice at any time prior to the election date in other publications of general circulation, and may use other available media to publicize the election. The Seminole Producer shall be the official news media for election information and dates.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2013-17; March 1, 2014; amended by TO 2017-03, April 13, 2017.]

**Section 405. Polling Locations**

(a) The Election Board shall establish the number of polling locations and, at a minimum, have polling locations in the following areas: Sasakwa, Mekusukey, Strother, Oklahoma City, and Shawnee.

(b) The Election Board shall open the polling locations from 7:00 a.m. to 7:00 p.m. on election day. Voters may vote at any polling location in any election; provided that voters may vote only one time in and in only one polling location in each election.

(c) A synced electronic voter register will be utilized at the polling locations to mark voters who have cast a ballot in the election to ensure that voters do not cast ballots at more than one polling location.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2006-03, June 3, 2006; amended by TO 2008-16, July 10, 2008; amended by TO 2013-17; March 1, 2014; amended by TO 2017-03, April 13, 2017.]

#### **Section 406. Polling Location Committees**

There shall be a committee for each polling location, which will consist of an Election Board member or persons appointed by the Election Board. The Chairman of each polling location committee will be either the member of the Election Board or the person designated as Chairman of that polling location by the Election Board. Additionally, the Chairman of the Election Board may be posted at a central voting location on the day of the election. Each polling location worker, polling location committee Chairman and Election Board Member shall cast their votes by absentee ballot. The polling location committees shall supervise the election at each polling location, and shall each have the following specific duties:

- (a) To ascertain that the name of each person offering to vote is on the official voting list.
- (b) To see that each ballot is cast by the voter himself, that the voter list is checked, and that the voter signs or marks the voter list.
- (c) Any question of eligibility for prospective voters on election day shall be decided by the respective polling location committee, whose decision shall be final.
- (d) To keep the ballot boxes locked at all times, except when the ballots are being counted.
- (e) To count the ballots cast and to make a tally thereof.
- (f) To make a certified election return to the Election Board and post a copy thereof at the polling location.
- (g) To preserve spoiled and mutilated ballots.
- (h) After counting is completed, to return all the ballots cast to the election boxes, lock and mark the boxes with the name of the polling location.
- (i) To return the unused, spoiled and mutilated ballots and locked ballot boxes to the Election Board immediately following the election.
- (j) No member of the polling location committee shall leave the polling location during voting hours without the permission of the polling location committee Chairman.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 97-01B, May 10, 1997; amended by TO 2006-03, June 3, 2006; amended by TO 2013-17; March 1, 2014; amended on April 4, 2017 pursuant to authority granted by SNC Title 21, § 203.]

**Section 407. Voting Procedure and Ballots for Voting at Polling Locations**

(a) Regular Voting Procedure. The polling location Chairman shall show the first voter that the ballot box is empty and then lock it in his presence. Any qualified voter may vote at any polling location by announcing his name to the polling location worker, after proper identification of eligibility. After signing the voter register, a ballot will then be issued with the voter marking the ballot and then placing it in the ballot box provided by the Election Board. If it is necessary to verify a voter's qualifications, the polling location worker may request to see the sufficient proof of the voter's identity in the form of a valid tribal membership card issued by the Nation's Enrollment Office or another form of photo identification issued by a governmental authority.

(b) Regular Ballots. Official ballots used by voters at polling locations shall be called "regular ballots." They shall be issued by the Election Board to each polling location committee. Regular ballots shall be printed in the English language with interpretation, and assistance to the blind and disabled being provided by the polling location committee Chairman or designated bi-lingual polling location worker. Regular ballots shall be consecutively numbered. Regular ballots must have printed thereon the following:

SEMINOLE NATION OF OKLAHOMA  
OFFICIAL BALLOT  
GENERAL [RUN-OFF OR SPECIAL] ELECTION, [DATE]

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12,  
November 16, 1991; amended by TO 94-10, August 13, 1994; amended by TO  
97-01B, May 10, 1997; amended by TO 2013-17; March 1, 2014; amended by TO  
2017-03, April 13, 2017.]

**Section 408. Voting Procedure and Ballots for Absentee Voting**

(a) Request for Absentee Ballots. Absentee ballot forms shall be available at the Election Board Office for those registered voters unable to vote at a polling location. The request for an absentee ballot must be made in writing, must be properly signed, and must be received by the Election Board Office by the close of business at least thirty (30) calendar days prior to the general election date. All voters who timely request an absentee ballot and who are deemed to be eligible to vote will receive an absentee ballot. Absentee ballot requests for a run-off election shall be automatically mailed to those who requested an absentee ballot in the general election. Absentee ballot requests for a run-off election by persons who did not vote by absentee ballot in the general election must be received by the Election Board Office at least twenty (20) calendar days prior to the run-off election date. No more than one request per individual signature for each election date shall be accepted.

(b) Form of Absentee Ballots. Absentee ballots shall have printed thereon the following:

SEMINOLE NATION OF OKLAHOMA  
ABSENTEE BALLOT  
GENERAL [RUN-OFF OR SPECIAL] ELECTION, [DATE]

Absentee ballots shall be placed in an unmarked inner envelope. The unmarked inner envelope shall be placed in an outer envelope. The following shall be stamped on the back of the outer envelope:

SEMINOLE NATION OF OKLAHOMA  
ABSENTEE BALLOT OUTER ENVELOPE

"I will be unable to vote at my designated polling location and have enclosed my ballot in the GENERAL [OR "RUN-OFF" OR "SPECIAL"] ELECTION, [DATE]"

---

Voter's signature

---

Printed Name & Date

(c) Issuance of Absentee Ballots and Use of Absentee Ballots and Records on Election Day. Absentee ballots shall be consecutively numbered and issued to qualified voters with the Election Board maintaining a separate record of voters to whom such ballots were issued. Absentee ballots must be received through the mail no later than the last mail run on the election date. Each polling location committee shall have the absentee ballot voter list on hand at all polling locations on election day, and if the voter appears and requests to vote in person, he will be allowed to do so, provided that the absentee ballot list will so reflect that his absentee ballot is void, and his absentee ballot shall be voided after the polls close, prior to the count of the absentee ballots. Absentee ballots shall not be removed from the outer envelope containing the voters name until after the close of the polls and after the voiding of any absentee ballots received for voters who appeared to vote in person. Absentee ballots so voided shall be placed in a separate envelope designated "Voided Absentee Ballots," and shall be locked in the applicable absentee ballot box following the count.

(d) No officer of the Nation, employee, candidate for office, and the candidates' immediate family members, or any person(s) acting in an official capacity for the Nation, except the Enrollment Director or his designee, the Election Board members and the company assisting in the election, may be directly involved in the issuance and validation of absentee ballots.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 94-10, August 13, 1994; amended by TO 97-01B, May 10, 1997; amended and clarified by TO 97-4, June 7, 1997; amended by TO 2013-17; March 1, 2014; amended by TO 2017-03, April 13, 2017.]

**Section 409. Election Returns**

(a) Ballot boxes shall be locked, and shall not be opened, unlocked or removed from the polling location at any time prior to the close of the polls. Immediately following the close of the polls, the ballots shall be counted by the polling location Chairperson in the presence of the polling location committee and the poll watchers, if any. The polling locations Chairperson shall then announce the results of the count. The ballots will then be placed in another ballot box and locked with three separate locks in the presence of the polling location Chairperson, tribal

security officer and the poll watchers, if any. The ballot boxes shall then be moved by a tribal security officer and the polling location Chairperson to a central location designated by the Election Board. Absentee ballots shall be counted pursuant to the provisions of section 408(c) herein.

(b) Results of the voting shall be submitted by each polling location committee to Election Board on prescribed Election Board forms. The form shall be signed by all polling location committee members. The polling location Chairman shall post a copy of the results at the polling location.

(c) All ballots cast shall be placed in the ballot boxes, locked, and marked with the name of the polling location and the date of election and given to the Election Board. All unused and spoiled or mutilated ballots shall also be given to the Election Board. The Election Board shall store the ballots in a safe place for a minimum period of forty-five calendar days after the election.

(d) The Election Board shall within three business days, after the election, prepare a consolidated return of the election results, certify and forward such results to the Chief. Copies shall be furnished to the Bureau of Indian Affairs Superintendent, Wewoka Agency and to the Regional Director, Eastern Oklahoma Regional Office. A copy shall be retained for use by the Election Board. The official results of the election shall be published in the Seminole Producer. Other available news media shall also be furnished the official results.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

#### **Section 410. Run-off Elections**

(a) Run-off Elections for Chief. Election of Chief and Assistant Chief shall be at large. No candidate for Chief or Assistant Chief shall be considered elected unless he or she has received the majority of the votes cast. If a candidate for Chief or Assistant Chief does not receive the required majority of votes, a run-off election shall be held four weeks after the election, and shall be subject to all the rules and requirements of the general election. In the event of a run-off election, only the names of the two candidates with the highest number of votes cast in the first election shall appear on the ballot.

(b) Run-off Elections of Council Members. Council members shall be elected by a plurality of the votes cast. A tie vote for councilperson shall be decided by their band. Election of Council members shall be by band and all qualified voters shall be entitled to cast one vote for each seat his or her band has on the General Council to be filled.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993.]

### **Section 411. Electioneering**

No person shall be allowed to electioneer within 100 feet of the building where and when the election is in progress. Persons in violation of this section shall be subject to removal by the Nation's Lighthouse Police or other local law enforcement at the request of the chairman of the polling location.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2017-03, April 13, 2017.]

### **Section 412. Poll Watchers**

Candidates for the office of Chief and the office of Assistant Chief shall be allowed to have poll watchers at each polling location to watch the election process. However, only one poll watcher will be allowed at any one time for each polling location. Such poll watchers must be properly identified to the Election Board at least five (5) business days prior to the election. Poll watchers may not raise any challenges to the election process at any time.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2013-17; March 1, 2014.]

### **Section 413. Election Recounts**

(a) Request for Recount. A written request for recount of any election results, including appeals of special elections on constitutional amendments, must be filed in the Election Board Office in writing within five (5) calendar days after certification of election results and returns.

(b) Person Authorized to Request Recount. In appeals of elections for office, only the defeated candidate shall be permitted to request a recount. In appeals of referendum elections, any registered voter of the Nation may request a recount.

(c) Filing Fee When Recount Sought. The request for recount shall be accompanied by a certified check, cashier's check or money order in the amount of \$200 per polling location made payable to the Election Board. The absentee ballots shall be considered a separate polling location. Said fee shall be refunded to the complainant only if the recount produces an election outcome different from the outcome originally certified as correct by the Election Board.

(d) Recount Procedure. The Election Appeals Board shall recount the ballots of the election protested within five (5) calendar days of the date of receipt of said request. The Election Board members may each be present during the recount. The complainant and all other candidates for the elective office involved in the recount, or their designated representatives, shall be permitted to attend the recount.

(e) Recount Results. Following the recount, the Election Appeals Board shall verbally announce the number of votes in favor of each candidate or referendum question, and the number of votes opposed to each referendum question. If the recount results are identical to the original count, the Election Appeals Board members shall each certify on the original



certificate that a recount was held, the date of the recount, and that the Election Appeals Board confirmed the accuracy of the results. In the event the recount produces results different than those originally certified as correct by the Election Board, the Election Appeals Board members shall each execute the corrected certificate of results. A corrected certificate of results shall result in invalidation of the election only if the correction changes the election outcome. The Election Appeals Board shall send by certified mail a copy of the final certificate of results to each candidate for the office involved in the recount, and to the complainant. The Election Appeals Board shall post a copy of the final certificate in the Election Board Office. The decision of the Election Appeals Board shall be final and unappealable to the Nation's Courts.

[HISTORY: Enacted by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-10, April 3, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-03, April 13, 2017.]

#### **Section 414. Election Appeals: General**

(a) Types of Election Appeals. Election appeals shall be limited to appeals of one of the following types of actions:

- (1) An Election Board decision regarding candidate eligibility; and
- (2) An alleged violation of Title 10 or of any election procedures adopted by the Election Board and in force at the time of the alleged violation.

(b) Time to Appeal.

- (1) Any appeal of an Election Board decision regarding candidate eligibility under section 414(a)(1) must be filed in the Election Board Office in writing
  - (A) within three (3) calendar days of the closing of the candidate filing period in the event a candidate wishes to challenge the eligibility of another candidate, or
  - (B) within five (5) calendar days after delivery of notice of denial of eligibility for candidacy by the Election Board in the event a candidate wishes to challenge the Election Board's denial of his own eligibility.

A notice which is mailed shall be deemed to be delivered three (3) calendar days after being deposited with the United States Postal Service properly addressed to the recipient, certified, with postage prepaid thereon. If notice be given by e-mail or facsimile transmission, such notice shall be deemed to be delivered 24 hours after transmission to the recipient.

- (2) Any appeal of an alleged violation of Title 10 or of any election procedures adopted by the Election Board in force at the time of the alleged violation under Section 414(a)(2), including any appeal relating to an alleged violation during a special referendum election, must be filed no

earlier than the certification of the election results and returns by the Election Board and no later than five (5) calendar days after the Election Board's certification of the election results and returns.

(c) Person Authorized to Appeal. In appeals of elections for office, only another candidate for the same office, the person denied eligibility, or the defeated candidate shall be permitted to file an appeal. In appeals of referendum elections, any registered voter of the Nation may file an appeal. The Election Board Chairman shall deliver copies of each appeal notice and related documents to the Election Appeals Board in a timely manner.

(d) Contents of Notice. The notification to the Election Appeals Board must be in writing and must include the following: The complainant's name, address and enrollment number; the nature of the complaint; any information relevant to the challenged candidate's or complainant's eligibility for office where such eligibility is at issue; specific facts and circumstances sufficient to identify each alleged violation of Title 10 or of any election procedures adopted by the Election Board in force at the time of the alleged violation, including the date of the alleged violation and the identity of the person involved in the violation; and all witnesses and the relief sought by the complainant.

(e) Filing Fee. Except as provided in Section 301(k) of this Title, the filing fee for appeals to the Election Appeals Board shall be \$300.00 per appeal, which is due when submitting the appeal.

[HISTORY: Enacted by TO 93-10, April 3, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

**Section 415. Appeal of Election Board Finding of Candidate Eligibility: Special Procedures**

Within three (3) business days of receipt by the Election Board Office of an appeal pursuant to Section 414(a)(1) of this Title, the Election Appeals Board shall issue notice of hearing to the complainant and to the challenged candidate, if any, said hearing to be held no later than ten (10) calendar days from date of issuance of said notice. Said notice of hearing along with a copy of all documents filed pursuant to Section 414(d) shall be mailed to the complainant and to the challenged candidate, if any, by certified mail, and a copy shall be hand delivered to the complainant and to the challenged candidate, if any, if possible. The appeal hearing shall be held pursuant to the provisions of Section 417 herein. The Election Appeals Board's decision shall be in writing, and shall be served on the complainant and to the challenged candidate, if any, by registered mail or in person no later than five (5) calendar days following the date of the hearing. The Election Appeals Board's decision may be appealed to the Nation's Supreme Court pursuant to Article XVI, Section 2 of the Constitution of the Seminole Nation of Oklahoma, provided such written appeal is filed with the Nation's Supreme Court within five (5) calendar days of issuance of the Election Appeals Board decision. The Nation's Supreme Court shall hear any appeal from a decision of the Election Appeals Board within fifteen (15) calendar days of date of filing said appeal and shall issue a decision thereon within three (3) business days of the hearing.

[HISTORY: Enacted by TO 93-10, April 3, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

#### **Section 416. Appeals Alleging Election Law Violations: Special Procedures**

Within ten (10) calendar days of receipt by the Election Board Office of an appeal based upon allegations of a violation of Title 10 or of any election procedures adopted by the Election Board and in force at the time of the alleged violation, the Election Board shall file an answer in response to each allegation with the Election Board Office and shall send a copy of said answer to the complainant by certified mail. Within ten (10) calendar days of the filing of the answer, the Election Appeals Board shall issue notice of hearing to the complainant, said hearing to be held no later than twenty (20) calendar days from date of filing of the Election Board answer. Said notice of hearing shall be mailed to the complainant by certified mail, and a copy shall be hand delivered to the complainant if possible. The appeal hearing shall be held pursuant to the provisions of section 417 herein. The Election Appeals Board's decision shall be in writing, shall be issued no later than five (5) calendar days following the date of the hearing and shall be served on the complainant by registered mail or in person. The decision shall require the invalidation of election results only if the complainant proves by clear and convincing evidence that a substantial violation of Title 10 occurred and that said violation affected or had a strong likelihood of affecting the election outcome. The Election Appeals Board may declare a new winner for any office only if the evidence deduced at the hearing shows by clear and convincing evidence that the new winner sufficiently won the office. Otherwise, the Election Appeals Board may only order a new election for any office affected by the violation and that election will include only those candidates previously certified in the invalidated offices. If the Election Board determines that any candidate for office was directly related to the cause for the invalidation of the election then that candidate shall be stricken from the new election. The Election Appeals Board's decision may be appealed to the Nation's Supreme Court, provided such written appeal is filed with the Supreme Court within five (5) calendar days of issuance of the Election Appeals Board decision. The Supreme Court shall hear the appeal within fifteen (15) calendar days of date of filing said appeal and shall issue a decision thereon within three (3) business days of the hearing.

[HISTORY: Enacted by TO 93-10, April 3, 1993; amended by TO 2013-17; March 1, 2014; amended by TO 2017-02, March 16, 2017; amended by TO 2017-02, March 16, 2017; amended by TO 2017-03, April 13, 2017.]

#### **Section 417. Conduct of Appeal Hearings**

All appeal hearings shall be conducted by the Election Appeals Board. Hearings shall be governed by the following rules of procedure:

(a) The complainant, the challenged candidate, if any, and the Election Board may present testimony of witnesses and other evidence and the complainant and the challenged candidate, if any, may be represented by counsel at his own expense.

(b) The Chairman of the Election Appeals Board or the Vice-Chairman shall preside and the Election Appeals Board shall proceed to ascertain the facts in a reasonable and orderly fashion.

(c) The Election Appeals Board may consider any evidence which it deems relevant to the hearing, and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Election Appeals Board.

(d) The Election Appeals Board shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Election Appeals Board.

(e) No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party requesting said record.

(f) The hearing may be adjourned, postponed and continued at the discretion of the Election Appeals Board.

(g) At the final close of the hearings, the Election Appeals Board may take immediate action or take the matter under advisement.

[HISTORY: Enacted by TO 93-15, April 3, 1993; amended by TO 93-50, April 22, 1993; amended by TO 2017-03, April 13, 2017.]

[REFERENCE COMPLETE HISTORY OF ALL ELECTION LAWS: Ordinances 72-3, 72-3, 73-1, 73-2, 77-2, 81-1, 81-2, 81-3, 85-1, 88-2, 89-2, as amended by TO 91-06, August 24, 1991; codified by TO 91-12, November 16, 1991; amended by TO 97-01B, May 10, 1997; amended by TO 00-02, March 4, 2000.]

**TITLE 11**  
**EMPLOYMENT RELATIONS CODE**  
**INDEX**

<b>TITLE 11 EMPLOYMENT RELATIONS CODE INDEX.....</b>	<b>i</b>
<b>TITLE 11 EMPLOYMENT RELATIONS CODE.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Former Law Repealed .....	1
Section 103. Applicability .....	1
Section 104. Definitions .....	1
Section 105. RECODIFIED.....	6
Section 106. RECODIFIED.....	6
Section 107. RECODIFIED.....	6
<b>CHAPTER TWO PERSONNEL BOARD .....</b>	<b>7</b>
Section 201. Personnel Board Established .....	7
Section 202. Membership .....	7
Section 203. Removal.....	7
Section 204. Chairman.....	7
Section 205. Responsibilities .....	8
Section 206. Regulations .....	8
Section 207. Repeal.....	8
<b>CHAPTER THREE EMPLOYEE AND OFFICER SALARIES.....</b>	<b>9</b>
Section 301. Officer Salaries .....	9
Section 302. Wage and Salary Scales.....	9
Section 303. Employee Salaries .....	9
Section 304. Native American Day Established .....	10
Section 305. Annual Leave Fund Established .....	10
Section 306. Purpose .....	10
Section 307. Funding .....	10
Section 308. Employees Covered.....	10
Section 309. Fund Management.....	10
<b>CHAPTER FOUR HUMAN RESOURCES.....</b>	<b>12</b>
Section 401. Authority.....	12
Section 402. Employment Clause .....	12

Section 403.	Employee Records.....	13
Section 404.	Harassment.....	13
Section 405.	Sexual Harassment .....	14
Section 406.	Whistleblower Protection. ....	15
Section 407.	RECODIFIED .....	15
Section 408.	RECODIFIED .....	15
Section 409.	RECODIFIED .....	15
Section 410.	RECODIFIED .....	15
Section 411.	RECODIFIED .....	16
Section 412.	RECODIFIED .....	16
Section 413.	RECODIFIED .....	16
Section 414.	RECODIFIED .....	16
Section 415.	RECODIFIED .....	16
Section 416.	RECODIFIED .....	16
Section 417.	RECODIFIED .....	16
Section 418.	RECODIFIED .....	16
Section 419.	RECODIFIED .....	16
Section 420.	RECODIFIED .....	16
Section 421.	RECODIFIED .....	17
Section 422.	RECODIFIED .....	17
Section 423.	RECODIFIED .....	17
Section 424.	RECODIFIED .....	17
Section 425.	RECODIFIED .....	17
Section 426.	RECODIFIED .....	17
Section 427.	RECODIFIED .....	17
Section 428.	RECODIFIED .....	17
Section 429.	RECODIFIED .....	17
<b>CHAPTER FIVE EMPLOYMENT POLICIES .....</b>		<b>18</b>
Section 501.	General Statements.....	18
Section 502.	Position Classification and Allocation .....	18
Section 503.	Vacancies .....	19
Section 504.	Probationary Period.....	19
Section 505.	Performance Probationary Period .....	19
Section 506.	Employee Separation.....	20

Section 507.	Recall Policy .....	20
Section 508.	Rehire Policy.....	21
Section 509.	Employment of Relatives. Nepotism is strictly prohibited.....	21
Section 510.	No Solicitation / No Distribution Policy .....	21
<b>CHAPTER SIX COMPENSATION AND PAYROLL PRACTICES.....</b>		<b>22</b>
Section 601.	Salary/Wage.....	22
Section 602.	Salary and Wage Merit Adjustments.....	22
Section 603.	Compensation upon Position Reclassification.....	22
Section 604.	Transfer of Benefits.....	23
Section 605.	Compensatory Time .....	23
Section 606.	Employer Required Educational/Meeting Activities .....	23
Section 607.	Travel Time.....	23
Section 608.	Compensation Upon Employment Separation.....	24
Section 609.	Severance Pay .....	24
Section 610.	Performance Evaluations .....	25
Section 611.	Other Workplace Policies .....	25
Section 612.	Confidential Information .....	26
Section 613.	Unlawful Conduct in Labor Controversies.....	26
Section 614.	Garnishments .....	27
Section 615.	Unemployment Compensation.....	27
<b>CHAPTER SEVEN EMPLOYEE BENEFITS .....</b>		<b>28</b>
Section 701.	General.....	28
Section 702.	Benefits & Leave.....	28
Section 703.	Leave Benefits.....	28
Section 704.	Seminole Nation Holidays .....	29
Section 705.	Holiday Pay.....	30
Section 706.	Paid Time Off .....	31
Section 707.	Sick Leave .....	31
Section 708.	Transfer of Leave Time .....	32
Section 709.	Funeral Leave.....	33
Section 710.	Cultural Leave.....	34
Section 711.	Jury Duty and Witness Leave .....	34
Section 712.	Military Leave.....	34
Section 713.	Educational Leave .....	35

Section 714.	Administrative Leave .....	36
Section 715.	Family Medical Leave .....	36
Section 716.	Unpaid Leave of Absence .....	38
<b>CHAPTER EIGHT WORK RULES, EMPLOYEE CONDUCT, DISCIPLINE, AND ADMINISTRATIVE REVIEW .....</b>		<b>39</b>
Section 801.	General Hours of Work and Attendance.....	39
Section 802.	Attendance .....	39
Section 803.	Excessive Absenteeism.....	39
Section 804.	Abandonment of Employment .....	39
Section 805.	Personal Appearance/Clothing Attire.....	40
Section 806.	Employee Conduct .....	41
Section 807.	Employee Discipline .....	44
Section 808.	Termination.....	45
Section 809.	Internal Dispute Resolution Policy.....	45
Section 810.	Grievances .....	45
Section 811.	Notification of Disciplinary Action.....	46
Section 812.	Smoking Policy .....	46
Section 813.	Participation in Community Affairs .....	47
<b>CHAPTER NINE MOTOR VEHICLE OPERATION POLICY.....</b>		<b>48</b>
Section 901.	Purpose .....	48
Section 902.	Definitions .....	48
Section 903.	Driver Qualifications .....	48
Section 904.	Roles and Responsibilities .....	49
Section 905.	Operator Requirements.....	51
Section 906.	Authorization Procedures .....	53
Section 907.	Failure to Report Incidents Involving Motor Vehicles.....	53
Section 908.	Motor Vehicle Operation Policy Guidance.....	54
<b>CHAPTER TEN TRAVEL POLICY .....</b>		<b>57</b>
Section 1001.	Purpose.....	57
Section 1002.	Applicability.....	57
Section 1003.	References to Other Law.....	57
Section 1004.	Definitions.....	57
Section 1005.	Travel Regulations.....	58
Section 1006.	Travel Policy Overview .....	58
Section 1007.	Permission to Travel .....	58



Section 1008.	Travel Contact Person.....	58
Section 1009.	Travel Advances .....	59
Section 1010.	Recoupment of Travel Advances .....	59
Section 1011.	Allowances and Reimbursements Authorized .....	60
Section 1012.	Applicability .....	62
Section 1013.	Additional Provisions of Travel Policy.....	62
<b>CHAPTER ELEVEN HEAD START/EARLY HEAD START PROVISIONS .....</b>		<b>63</b>
Section 1101.	Definitions.....	63
Section 1102.	General Provisions.....	63
Section 1103.	Employment Preference .....	63
Section 1104.	Recruitment and Selection .....	64
Section 1105.	Temporary Hires.....	65
Section 1106.	Termination Procedures .....	66
Section 1107.	Appeals .....	66
Section 1108.	Investigation of Child Abuse or Mistreatment .....	67
Section 1109.	Drug Testing.....	67

# **TITLE 11**

## **EMPLOYMENT RELATIONS CODE**

### **CHAPTER ONE**

#### **GENERAL PROVISIONS**

##### **Section 101. Title**

This Employment Relations Code, herein after known as “ERC,” is the official employment law of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO-2015-06, July 25, 2015.]

##### **Section 102. Former Law Repealed**

The ERC supersedes the former provisions in Title 11, the Nation's Personnel Policies and Procedures Manual and all other policies, rules, and regulations enacted by Legislative resolutions pertaining to the employment law of the Nation.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 94-4, March 5, 1994; amended by TO 2015-06, July 25, 2015.]

##### **Section 103. Applicability**

This Code is applicable to all employees of the Seminole Nation.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 2015-06, July 25, 2015.]

##### **Section 104. Definitions**

Whenever the following terms are used in the ERC, they shall have the meanings indicated.

(a) “Abandonment” shall mean absent without authorized leave for three (3) consecutive work days.

(b) “Agency” shall mean external organization or unit engaged in business, providing services, information, or goods within the jurisdiction of the Seminole Nation.

(c) Appointments

(1) “Acting Appointment” is the temporary assignment of a person to a vacant position in the absence of the employee who normally fills such position.

Persons appointed to acting assignments must possess the minimum qualifications for that position. Such persons shall have limited responsibilities and authority of the position unless directed otherwise by the Executive Office. Persons appointed to acting assignments will be paid their normal salary, plus ten (10) percent of their normal salary for the duration of the Acting Appointment or until a replacement has been hired.

(d) “Class” means a group of positions sufficiently similar in respect to the duties and responsibilities as may be used with clarity to designate each position allocation to the class; common requirements such as to education, experience, knowledge, ability and other qualifications exist for all incumbents; common tests of fitness may be used to choose qualified employees; and the same schedule of compensation can be made to apply with equity under the same or substantially the same employment conditions.

(e) “Classification Plan” is a listing of job titles and descriptions in regular service.

(f) “Cohabit” or “Cohabitant” means two individuals living together, who are financially and intimately associated in a committed relationship, yet not legally married.

(g) “Comparable Wage” is a wage that is up to 15% of the current wage or previous wage, unless otherwise authorized in writing.

(h) “Compensation” means the payment made to employees in consideration of the number of hours worked in accordance with payment schedules, including pay for overtime and other forms of payment in connection with the performance of job assignments. Total compensation refers to that amount of pay plus employment related benefits received by employees, including contributions to the employee’s medical and dental programs, retirement, sick and annual leave and other similar benefits.

(i) “Continuous Employment” means employment without interruption, including authorized vacation, military leave, or other paid leaves, unpaid Family Medical Leave, or other approved leaves of absence.

(j) Dates

(1) “Annual Review Date” is the date one (1) year from the original date of hire and each subsequent year of continuous employment.

(2) “Original Date of Hire” is the initial date of hire to a regular position.

(k) “Director” is the head of a specific Department.

(l) “Demotion” means a change in employment status resulting in movement from one position to another that has lower qualifications and/or lesser job responsibilities and assigned a lower pay range.

(m) “Employee” is any individual employed by the Seminole Nation, regardless of the source of the funds by which the employee is paid. The term “employee” shall include any person elected or appointed. The Nation further classifies its employees as follows:

- (1) “Contract Employee” means an employee who has entered into a contractual employment agreement with the Seminole Nation. All such contracts shall conform to all Resolutions and/or laws passed by the General Council with respect to the contracting process and shall comply with Federal Procurement regulations.
- (2) “Exempt Employee” is a salaried employee classified by the Nation as exempt. Such employees are those occupying executive, administrative, professional positions, appointed, and elected officials. Weekly salary is computed using the position’s annual fixed salary.
- (3) “Nonexempt Employee” means an employee covered by overtime. Such employees are entitled to overtime pay for work required to be performed in excess of 40 hours per workweek.
- (4) “Full-time Employee” means an employee who regularly works a minimum of 30 hours per week on a continuous basis following a probationary period.
- (5) “Part-time Employee” means an employee who has completed a satisfactory probationary period and regularly works less than 30 hours per week on a continuous basis. Part-time employees shall not hold supervisory positions.
- (6) “Regular Employee” means an employee hired through the interview process, excepting appointed and elective positions.
- (7) “Seasonal Employee” means an employee whose work is normally less than one (1) year but longer than six months, and who is expected to return on an annual basis.

(n) “Employer” means any person who hires or employs any other person to perform work or services and pays for such services or work by means of wages or a salary and includes any person acting directly or indirectly in the interest of an employee in relation to an employee.

(o) “Examination” is the process of measuring and evaluating the relative ability and fitness of applicants by job related testing procedures, which may include a medical examination performed by a qualified health care provider.

(p) “Flex Classification” is a position classification where a new hire may be employed at a higher base pay rate, not to exceed 30% of the base rate, than stated for that position based on educational or work experience qualifications that exceed the minimum job requirements. Whereas, for a “no-flex” position, the employee is hired at the starting base pay rate.

(q) “Good Standing.” An employee, who provides two (2) weeks written notice of intent to resign and does not have any punitive or administrative action pending prior to the resignation, resigns in good standing.

(r) “Grievance” means a claimed violation, misinterpretation, or inequitable application of the policies and procedures having a direct adverse effect on the grieving employee.

(s) “Indian Tribe” means an Indian tribe, band, nation or other organized group or community recognized as such by the United States Government.

(t) “Lateral Transfer” means a change in employee status from one position to another position having the same or substantially similar duties and pay range.

(u) “Leave without Pay” means a voluntary request by an employee for leave not exceeding 40 hours without pay.

(v) “Merit Increase” means an advancement of an eligible employee’s current pay from one salary step to a higher salary step within the same salary range based on satisfactory demonstration of individual efficiency and performance.

(w) “Minimum Wage” means the prevailing minimum wage as determined from time to time by the General Council.

(x) “Misconduct” means a deliberate and substantial disregard of the employer’s interests or violation of the law or those standards of behavior that an employer has a right to expect of every employee.

(y) “Modified Duty Assignment” means the assignment of an employee, who has been injured on or off the job, except in connection with off-duty employment, and has been medically released to perform limited employment tasks, to a job in which the employee can perform tasks based on physical restrictions for a designated period of time.

(z) “Native American” or “Indian” means an enrolled member of the Seminole Nation or an enrolled member of a federally recognized Indian tribe.

(aa) “Negligence” means an employee's failure to exercise safe and ordinary care in carrying out, applying, or complying with the ERC or other laws of the Nation. An employee is not using ordinary care, and is therefore negligent, if the employee does something that a reasonable person knew or should have known was contrary to Tribal law or fails to do something that a reasonable person knew or should have known to be in compliance with Tribal law.

(bb) “Nepotism” means favoritism shown to direct supervision of or the exercise of power or influence over relatives in employment or other services.

(cc) “Off-Duty Employment” means the simultaneous holding of a second job outside of the Nation by an employee.

(dd) Pay Rates.

(1) “Base Rate” is the beginning pay for a job as stated on the job

(2) “Prorate” means the proportional calculation of equivalency to the whole or full amount; an equivalent level of benefit credits over a given period.

(ee) “Performance Evaluation” is a formal system to evaluate performance factors related to an employee’s job duties, responsibilities and related employment characteristics on a regular and systematic basis by supervisory personnel.

(ff) “Person” means a natural person, Indian or non-Indian, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(gg) Probationary Period

(1) “Initial Probationary Period” means a period of ninety (90) days in which a new hire or a rehired employee serves under close supervision and his or her performance is evaluated in order to assess his or her ability and adaptation. During the initial probationary period a new hire’s job status is subject to greater scrutiny and if the Nation determines, in its sole discretion, that the new hire does not possess the necessary skill-set or interpersonal skills or does not meet job performance standards the decision to terminate the employment relationship may take place more swiftly than if the employee had progressed beyond the initial probationary period.

(2) “Performance Probationary Period” means a period of thirty (30) days in which an employee, who is promoted, demoted, laterally transferred, recalled to a different position, or a rehired employee, serves under close supervision and his or her performance is evaluated in order to assess his or her ability and adaptation.

(hh) “Professionals” means occupations that require specialized knowledge and licensing, which is usually acquired through college training or through work, experience and other training which provides comparable knowledge.

(ii) “Promotion” is a change in employment status from one position to another position that requires higher minimum qualifications, is assigned more difficult duties and responsibilities, and is assigned a higher pay range.

(jj) “Reclassification” is the modification of job title and/or duties due to material difference between the existing job description and the actual job duties required to perform functions of a position.

(kk) Separation

(1) “Layoff” is the involuntary separation in good standing from employment for non-disciplinary reasons including, but not limited to, lack of funds or work, abolishment of position, reorganization, or the reduction or elimination of services.

(2) “Resignation” is the voluntary separation from employment in either good standing or not in good standing.

(ll) “Suspension” is the temporary removal of an employee from service, without pay, for disciplinary or investigative reasons and for a specified period of time.

(mm) “Termination” is the involuntary separation from employment not in good standing.

(nn) “Temporary Reassignment” means a short-term, not to exceed 90 days, placement in a different position of employment due to business needs.

(oo) “Unpaid Leave of Absence” means voluntary request for leave without pay, which exceeds 40 hours. Unpaid leave of absence not related to FMLA must be approved by the HR Director and Executive Office.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 94-4, March 5, 1994; amended by TO 2015-06, July 25, 2015; amended by TO 2019-01 until a Personnel Board is nominated and constitutes a quorum, January 26, 2019.]

**Section 105. RECODIFIED**

[HISTORY: Former § 105 re-codified and amended as § 205 by TO 2015-06, July 25, 2015.]

**Section 106. RECODIFIED**

[HISTORY: Former § 105 re-codified and amended as § 206 by TO 2015-06, July 25, 2015.]

**Section 107. RECODIFIED**

[HISTORY: Former § 105 re-codified and amended as § 206 by TO 2015-06, July 25, 2015.]

## **CHAPTER TWO PERSONNEL BOARD**

### **Section 201. Personnel Board Established**

There is hereby established a Personnel Board of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; renumbered by TO 2015-06, July 25, 2015.]

### **Section 202. Membership**

The Personnel Board shall consist of five members of the Seminole Nation appointed by the Principal Chief and confirmed by the General Council. The term of office shall commence on date of appointment and end on September 30, 1997 and every four years thereafter. The Principal Chief shall also designate a tribal office, namely the Human Resources Director, or designee, to perform personnel responsibilities.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 94-4, March 5, 1994; amended by TO 2015-06, July 25, 2015.]

### **Section 203. Removal**

Members of the Personnel Board shall be removed only for good cause pursuant to Article IX, Section 1, of the Seminole Constitution. In the event of any vacancy by reason of death, resignation or removal, a successor member shall be appointed by the Chief subject to approval by the General Council for the remainder of the term vacated.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; renumbered by TO 2015-06, July 25, 2015.]

### **Section 204. Chairman**

The Board shall elect a Chairman from its membership.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 94-4, March 5, 1994; renumbered by TO 2015-06, July 25, 2015.]



## **Section 205. Responsibilities**

The Personnel Board shall be responsible for the following personnel matters for all employees of the Seminole Nation of Oklahoma, excluding employees of gaming or any other business enterprises owned or operated by the Seminole Nation:

- (a) Development and approval of all personnel policies;
- (b) Review of activities related to recruitment, placement and hiring, promotions, position transfers, disciplinary actions;
- (c) Reporting to the General Council upon request or as needed regarding proposed amendments to laws affecting personnel matters and other matters related to personnel;
- (d) Serving as hearing board for personnel grievances, provided that all personnel grievance hearings and appeals shall be conducted by the Personnel Board in a manner consistent with procedures set forth in Title 16, section 713 of the Code of Laws of the Seminole Nation; provided that the appealing party shall have the right to be represented by legal counsel at his own expense; and provided further that the decision of the Personnel Board in such matters shall be final and un-appealable to any other administrative hearing board; and
- (e) Any other function set forth in Title 11 herein.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 94-4, March 5, 1994; amended by TO 2015-06, July 25, 2015.]

## **Section 206. Regulations**

The Personnel Board may adopt rules and regulations consistent with Title 11 and the Constitution of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; amended by TO 94-4, March 5, 1994; renumbered by TO 2015-06, July 25, 2015.]

## **Section 207. Repeal**

This Ordinance and amendments shall supersede any and all previous ordinances concerning employment of personnel for the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 74-2, June 8, 1974; amended by TO 76-1, July 17, 1976; amended by TO 88-3, April 15, 1988; codified by TO 91-12, November 16, 1991; renumbered by TO 2015-06, July 25, 2015.]

## **CHAPTER THREE**

### **EMPLOYEE AND OFFICER SALARIES**

#### **Section 301. Officer Salaries**

(a) The salaries of officers of the Seminole Nation shall be approved by General Council.

(b) In addition to the amount established pursuant to § 301(a), officers of the Seminole Nation may receive a three percent (3%) cost of living adjustment when the General Council approves a three percent (3%) cost of living adjustment for the Seminole Nation employees as provided in § 303 of this Title.

[HISTORY: Enacted by TO 74-1, June 8, 1974; amended by TO 91-07, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 91-17, December 7, 1991; amended by TO 92-14, September 19, 1992; amended by TO 93-20, September 24, 1993; amended by TO 94-12, September 3, 1994; amended by TO 94-15, November 19, 1994; amended by TO 95-04, June 3, 1995; amended by TO 97-01A, February 3, 1997; amended by TO 97-07, September 27, 1997; amended by TO 98-02, November 9, 1998; amended by TO 99-04, September 4, 1999; amended by TO 2000-05, October 7, 2000; amended by TO 2001-06, April 21, 2001; amended by TO 2003-12, September 6, 2003; amended by TO 2006-15, September 26, 2006; amended TO 2007-09, August 21, 2007; amended TO 2007-10, August 21, 2007; amended TO 2007-11, August 21, 2007; amended TO 2007-12, December 1, 2007; amended TO 2012-15, October 27, 2012; amended by TO 2015-06, July 25, 2015; amended by TO 2015-11, October 17, 2015.]

#### **Section 302. Wage and Salary Scales**

The Personnel Board is responsible for reviewing wage and salary scales which shall set salary ranges for tribal employees. Merit increases shall also be in accordance with the salary scale and in accordance with resolutions of the General Council approving the operating budget of the Seminole Nation.

[HISTORY: Enacted by TO 91-12, November 16, 1991; amended by TO 2015-06, July 25, 2015.]

#### **Section 303. Employee Salaries**

(a) There is hereby established a Salary Scale for employees of the Seminole Nation which shall be approved by the Personnel Board.

(b) In addition to amounts reflected on the Salary and Wage Schedule, employees of the Seminole Nation may receive an annual three percent (3%) cost of living adjustment as approved by the General Council.

[HISTORY: Enacted by TO 91-12, November 16, 1991; codified by TO 2006-14, December 9, 2006; amended by TO 2015-06, July 25, 2015.]

### **Section 304. Native American Day Established**

Within the Seminole Nation, Native American Day shall be declared a government holiday and observed on the Monday immediately following Seminole Nation Days, and Seminole Nation government offices shall be closed.

[HISTORY: Enacted by TO 2010-07, September 4, 2010; renumbered by TO 2015-06, July 25, 2015.]

### **Section 305. Annual Leave Fund Established**

The Tribal Treasurer is hereby authorized to establish an agency fund to be known as the "Annual Leave Fund."

[HISTORY: Enacted by TO 91-15, December 7, 1991; renumbered by TO 2015-06, July 25, 2015.]

### **Section 306. Purpose**

The purpose of this Annual Leave Fund shall be to act as custodian for funds to pay vested accumulated unpaid annual leave benefits.

[HISTORY: Enacted by TO 91-15, December 7, 1991; renumbered by TO 2015-06, July 25, 2015.]

### **Section 307. Funding**

The Executive Office is hereby authorized to accrue annual leave as it earned and when vested to make corresponding payments to the Annual Leave Fund.

[HISTORY: Enacted by TO 91-15, December 7, 1991; renumbered by TO 2015-06, July 25, 2015.]

### **Section 308. Employees Covered**

All employees of the Seminole Nation are covered by the provisions of this ordinance.

[HISTORY: Enacted by TO 91-15, December 7, 1991; renumbered by TO 2015-06, July 25, 2015.]

### **Section 309. Fund Management**

Funds in the Annual Leave Fund are to be placed in an interest-bearing account. Idle funds may be invested in short-term risk-free investments with interest thereon to be used to pay for increases in annual leave benefits payable resulting from increases in the annual compensation base of employees. Expenses associated with fund management (i.e., check printing charges, service charges, etc.) are allowable expenditures of Annual Leave Fund proceeds.

[HISTORY: Enacted by TO 91-15, December 7, 1991; amended by TO 2007-07, July 24, 2007; renumbered by TO 2015-06, July 25, 2015.]

## **CHAPTER FOUR HUMAN RESOURCES**

### **Section 401. Authority**

(a) Department of Human Resources: The Director of the Department of Human Resources (HR Director) is delegated the functions and authority to implement, manage, enforce, and promulgate i.e. create, establish, publish, make known and carry out the policies within this Code.

(b) Departments and Units.

- (1) Each department, division, or unit of the Nation with the approval and consultation of the HR Director may develop, implement, and revise as necessary internal procedures and operating rules pertaining to the unique operational requirements of the work unit for efficient and effective performance. Advance notice of internal unit procedures and rules shall be provided to employees and must be posted in public places to serve as notice to all employees.
- (2) Internal unit procedures and rules shall not conflict with the ERC. Where conflicts may arise between internal rules and procedures, the ERC will govern.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

[HISTORY NOTE: Former § 401 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 402. Employment Clause**

(a) Equal Employment Opportunity. With the exception of Seminole Nation preference in employment as set forth in paragraph (b) and the Seminole veterans preference in employment as set forth in paragraph (c), below, it will be a violation of the ERC to discriminate against any individual as it relates to hiring, firing or any aspect of the terms and conditions of the employment relationship based on an applicant or employee's gender (including pregnancy), race, color, religion, national origin, age, genetic information, status as a veteran, marital status, sexual orientation or disability, and all other categories protected by applicable and enforceable law(s).

(b) Seminole Tribal Preference in Employment. The Nation exercises Tribal Preference in employment and may exercise Native American Preference in employment under limited circumstances, when such action furthers a legitimate governmental purpose.

(c) Seminole Veterans Preference in Employment. The Nation exercises Seminole Veterans Preference in employment. This preference shall be applied to applicants to distinguish between equally qualified candidates/applicants for a position after Seminole Tribal Preference has been applied.

(d) Seminole Tribal Preference and Seminole Veterans Preference may be used to recruit, hire, train, recall and lay off employees of the Nation. For hiring purposes, Tribal preference/Native American preference is afforded to distinguish between equally qualified candidates or applicants for a position. The HR Department is responsible for monitoring the Preference Policy. Disciplinary action may occur for supervisors who are found to have not adhered to this policy.

(e) Hiring Policy. Upon an offer of employment, the Nation shall require a pre-employment medical screening and background investigation. Subject to the results of the pre-employment testing, confirmation of employment shall be made by the HR Department or designee.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; amended by TO 2018-01, January 27, 2018.]

[HISTORY NOTE: Former § 402 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 403. Employee Records**

(a) Access to Employee Information. All employees may request to review his/her personnel file by submitting a written request to the Department of Human Resources. Such requests may be granted or denied in the sole discretion of the HR Department or designee based on the merits of the request and the business needs of the Nation.

(b) Disclosure of Employee Records.

(1) The Nation shall not disclose, in replying to external inquiries, any personnel or related records or information on an applicant, employee, or former employee, except pursuant to valid subpoena, court order or other administrative document that compels the Nation to provide the information and/or documents.

(2) Limitation on Access. Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of an administrative or judicial action or proceeding.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

[HISTORY NOTE: Former § 403 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 404. Harassment**

(a) Harassment, including physical, verbal and non-verbal conduct, is a form of non-consensual employee misconduct engaged in as a result of another employee's gender (including pregnancy), race, color, religion, national origin, age, genetic information, status as a veteran, marital status, sexual orientation or disability, both demeans another person and undermines the integrity of the employment relationship by creating an unreasonably intimidating, hostile, and objectively offensive working environment.

- (1) Sexual harassment includes, but is not limited to:
  - (A) Sexual flirtation, touching, advances or propositions;
  - (B) Verbal abuse of a sexual nature;
  - (C) Graphic or suggestive comments about an individual's dress or body;
  - (D) Sexually degrading words to describe an individual; and
  - (E) The display in the workplace of sexually suggestive objects or pictures.

(b) No employee shall be subject to retaliation or retribution for reporting harassment. Retaliation or retribution is strictly prohibited.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Former § 404 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 405. Sexual Harassment**

- (a) The purpose of the Seminole Nation sexual harassment policy is to:
  - (1) Prohibit sexual harassment in the workplace.
  - (2) Encourage employees who are victims or witnesses of sexual harassment to report such instances.
  - (3) Establish an administrative procedure for the reporting of instances of sexual harassment.
- (b) Sexual harassment by or of supervisors, employees, or non-employees is strictly prohibited and will be investigated for possible disciplinary action.
  - (1) No employee shall be subjected to unsolicited and/or unwelcome sexual overtures or conduct, either verbal or physical.
  - (2) Sexual harassment will be treated as misconduct with appropriate disciplinary sanctions, up to and including termination of employment.
  - (3) No employee shall be subject to retaliation or retribution for reporting sexual harassment. Retaliation or retribution is strictly prohibited.
  - (4) The Department of Human Resources shall promulgate guidelines and

procedures for the reporting and complaint handling procedures within the Nation.

(c) Penalties

- (1) Where an investigation concludes that an employee has committed an act of sexual harassment, the employee may be subject to disciplinary action up to and including termination of employment.
- (2) Providing false information in the course of a sexual harassment investigation is grounds for disciplinary action, up to and including termination.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

[HISTORY NOTE: Former § 405 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 406. Whistleblower Protection**

Employees who make disclosures described in this section serve the Nation's interests by assisting in the elimination of fraud, waste, abuse, unnecessary expenditures and any other illegal or unethical business practices. Employees making such disclosure(s) shall be protected from reprisals and shall not suffer adverse consequences as a result of prohibited personnel practices. All employees have a duty to report to the Human Resources Department information which the employee reasonably believes is a violation of any law, rule, policy, or regulation that is applicable to the Nation.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

[HISTORY NOTE: Former § 406 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 407. RECODIFIED**

[HISTORY NOTE: Former § 407 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 408. RECODIFIED**

[HISTORY NOTE: Former § 408 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 409. RECODIFIED**

[HISTORY NOTE: Former § 409 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 410. RECODIFIED**



[HISTORY NOTE: Former § 410 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 411. RECODIFIED**

[HISTORY NOTE: Former § 411 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 412. RECODIFIED**

[HISTORY NOTE: Former § 412 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 413. RECODIFIED**

[HISTORY NOTE: Former § 413 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 414. RECODIFIED**

[HISTORY NOTE: Former § 414 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 415. RECODIFIED**

[HISTORY NOTE: Former § 415 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 416. RECODIFIED**

[HISTORY NOTE: Former § 416 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 417. RECODIFIED**

[HISTORY NOTE: Former § 417 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 418. RECODIFIED**

[HISTORY NOTE: Former § 418 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 419. RECODIFIED**

[HISTORY NOTE: Former § 419 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 420. RECODIFIED**

[HISTORY NOTE: Former § 420 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 421. RECODIFIED**

[HISTORY NOTE: Former § 421 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 422. RECODIFIED**

[HISTORY NOTE: Former § 422 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 423. RECODIFIED**

[HISTORY NOTE: Former § 423 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 424. RECODIFIED**

[HISTORY NOTE: Former § 424 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 425. RECODIFIED**

[HISTORY NOTE: Former § 425 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 426. RECODIFIED**

[HISTORY NOTE: Former § 426 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 427. RECODIFIED**

[HISTORY NOTE: Former § 427 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 428. RECODIFIED**

[HISTORY NOTE: Former § 428 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 429. RECODIFIED**

[HISTORY NOTE: Former § 429 re-codified in Title 11A by TO 2015-07, July 25, 2015.]

## **CHAPTER FIVE EMPLOYMENT POLICIES**

### **Section 501. General Statements**

(a) Consent to tribal jurisdiction. Employees of the Seminole Nation of Oklahoma consent to the exclusive jurisdiction of its grievance processes, all employment policies, the application of tribal laws, both substantive and procedural, regarding any and all proceedings, matters and things relating to the employment relationship within the organization.

(b) Definition of Sovereignty and Sovereign immunity. The tribe is a sovereign nation existing within the borders of the USA. One aspect of the tribe's sovereign status is its immunity from certain lawsuits, including employment-related causes of action. Accordingly, the tribe cannot be sued in any court without its consent. Nothing in this ERC constitutes, or should be interpreted as constituting, a waiver of the tribe's sovereign immunity.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015; Amended by TO 2019-01 until a Personnel Board is nominated and constitutes a quorum, January 26, 2019.]

### **Section 502. Position Classification and Allocation**

(a) Job Descriptions. The Nation shall maintain a job description on each separate position. The continuation of the class of employment is contingent upon funding authorization. The Nation reserves the right to change or reclassify positions based upon business need.

(b) Position Reclassification

- (1) Reclassification requests may be initiated by individual supervisory personnel, and all such requests must be substantiated in writing with such specific detail given to those duties and responsibilities being performed continuously for six (6) months that are different in scope from those contained in the applicable job description.
- (2) Reclassification of a position shall not be intentionally used for the purpose of discrimination, personal gain, discipline, or retaliation.
- (3) For reclassification that includes an increase in salary, a budget modification must be approved by the SNO Finance Committee (SNO-

FC). If approved by SNO-FC, then the budget modification must be approved by the SNO General Council.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015.]

**Section 503. Vacancies**

(a) Position vacancies will be filled based on job description standards after notification of the vacancy to the HR Department.

(b) The Seminole Nation makes it a general policy, subject to change based on business needs, that:

- (1) All vacant positions shall be posted to the general public as soon as the vacancy is known and shall remain posted for a period of two (2) weeks.
- (2) Once the position has closed, the applications shall be screened by the HR Department based on minimum qualifications of the position and then forwarded to the Hiring Manager.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015.]

**Section 504. Probationary Period**

(a) New hire and rehired employees shall serve an initial probationary period of ninety (90) days. During an initial probationary period, an employee will accrue annual leave but is not eligible to use it until the completion of the probationary period.

(b) The probationary employee may not file a grievance, except in matters pertaining to prohibited discrimination, retaliation or harassment.

(c) New hire employees, regardless of classification are eligible for all holidays observed by the Nation.

(d) New employees who have completed the initial 90-day initial probationary period are eligible for all benefits enjoyed as a regular full-time employee.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015.]

**Section 505. Performance Probationary Period**

(a) Promoted, demoted, laterally transferred into a different position, or recalled into a different position employee must serve a performance probationary period of 30 days.

(b) No probationary employees shall be promoted, demoted, transferred, or be temporarily reassigned during a probationary period.

(c) Employee Performance Evaluation. At the completion of an initial or performance probationary period, an employee shall receive an employee performance evaluation with or without a merit pay increase.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015.]

#### **Section 506. Employee Separation**

(a) Termination is an employee's involuntary separation from employment, save a layoff, that permanently ends the employment relationship between the employer and employee.

(b) Resignation. An employee voluntarily wishing to leave employment with the Seminole Nation in good standing must file a written resignation with the immediate supervisor at least two (2) weeks prior to the effective date, stating specific reason(s) for the resignation. The employee's resignation shall be promptly forwarded to the Human Resources Director.

(c) Layoff. An employee may be subject to layoff for reasons including, but not limited to; lack of funds or work, elimination of position, or reorganization.

- (1) Whenever it becomes necessary to reduce the work force through layoffs, the Nation will endeavor where possible to provide affected employees with at least ten (10) working days notice. The Nation may provide two weeks severance pay in lieu of ten working days prior to notice of layoff.
- (2) Employees shall be afforded the opportunity to apply for a voluntary layoff, when a layoff plan is being instituted.
- (3) When a layoff is to be implemented, the Human Resources Director will prepare a layoff plan. The plan will identify the number of positions by classification and identify incumbents to be laid off through the objective consideration of both ability and/or seniority in the position.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 507. Recall Policy**

The names of employees who are laid off or continue employment in a lower position will be placed on a recall list giving the position held at the time of layoff. The recall list will be maintained for a period of six (6) months from the effective date of the layoff.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015.]

### **Section 508. Rehire Policy**

(a) Former employees of the Nation who resigned in good standing and are rehired within three (3) months into the same position in the same department will be assigned the same rate of pay. A new annual review date shall be established.

(b) Former employees that are rehired into any other position within six (6) months will be assigned a pay rate in the same manner as a new hire. A new annual review date shall be established and the employee must complete a 90-day initial probationary period with/without possibility of a merit pay increase.

(c) Employees who resigned without good standing shall be treated as a new hire.

(d) Former employees who did not resign in good standing or who were terminated as a result of misconduct must submit a rehire request through the HR Department. HR will review the former employee file, consult with the departmental director, and with approval of the Principal Chief, will make a determination on the former employee's rehire status. The decision is final.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06, July 25, 2015.]

### **Section 509. Employment of Relatives. Nepotism is strictly prohibited**

(a) No employee may hold a job over which a member of his/her immediate family exercises supervisory authority. Immediate family is defined as parent, grandparent, sibling, child, step relative, spouse, or cohabitant.

(b) Any violation of the nepotism provision mandates that the supervisor or HR Director must cure the violation within three (3) work days or obtain the resignation of or terminate the person(s) violating the nepotism law.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

### **Section 510. No Solicitation / No Distribution Policy**

The solicitation of memberships or pledges, collection of funds, circulation of petitions, distribution of any printed materials, trespass, and any other similar types of activities by non-employees, on behalf of any organization, group, society, or individual, is not permitted on the Nation's property, facilities, unless a written permit is given by the Executive Office. Fund raisers sponsored by the Nation's Employee Events Team will be allowed.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **CHAPTER SIX**

### **COMPENSATION AND PAYROLL PRACTICES**

#### **Section 601. Salary/Wage**

- (a) Nonexempt employees will be paid at an hourly rate, for purposes of payroll accounting.
- (b) Elected officials, appointed officials and exempt employees shall be paid a fixed salary.
- (c) Compensation for Unauthorized Leave . Unauthorized leave or unexcused absence will not be compensated in any form.
- (d) No employee shall be paid less than the federal minimum wage.

[HISTORY: Enacted by TO 2008-08, April 8, 2008; amended by TO 2015-06,  
July 25, 2015.]

#### **Section 602. Salary and Wage Merit Adjustments**

- (a) The Nation may periodically revise pay rates or ranges resulting from studies of prevailing wages and other influential considerations. The Human Resources Director shall promulgate a standardized schedule to determine benchmarks for merit wage increases.
- (b) To be eligible for merit increases, employees must not have any categorical rating equal to “unacceptable” or “need improvement” on their annual performance evaluation.
- (c) The percentage of a merit increase will be determined in accordance with the Nation’s classification and compensation plan, the availability of funding, and approval of Tribal Council.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 603. Compensation upon Position Reclassification**

- (a) If a position is reclassified to a class having the same pay rate as the previous class, and if the employee meets the requirements of the reclassified position, the employee's pay rate and annual review date shall not change, otherwise:
- (b) If the position is reclassified to a class with a higher pay rate than the previous class, and if employee meets the requirements of the reclassified position, then the employee's pay rate shall change to equal the base rate of the new position. If his or her current rate of pay is higher than the reclassified position's rate of pay then his or her rate will remain the same. In either case, the employee's annual review date will not change.
- (c) If the position is reclassified to a lower pay rate class, and if the employee is retained to occupy the reclassified position, the employee's pay rate and annual review date shall

be unchanged. If the employee's pay rate in the former position is greater than the maximum rate established for the lower position, the employee's pay rate will be frozen until such time as the rate or range of the reclassified position reaches the employee's frozen rate.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 604. Transfer of Benefits**

Regular employees, upon transfer or reclassification, shall carry over their paid time off benefits, unless prohibited by law or federal/state program guidelines.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 605. Compensatory Time**

(a) All compensatory time must be pre-approved by the supervisor. Compensatory time may be paid only within appropriated funding levels.

(b) Overtime compensation for a given pay period will not be paid if the employee has any paid or unpaid leave during that pay period. An employee is limited to a maximum of forty (40) hours of paid compensation during a workweek in which an employee has taken any paid or unpaid leave.

(c) Approved overtime will be available to all non-exempt employees and offered based on employee seniority.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 606. Employer Required Educational/Meeting Activities**

Employee attendance at seminars, lectures, conferences, business-related meetings, and training programs at the direction of a supervisor will be considered hours worked and therefore compensable time.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 607. Travel Time**

(a) Travel time in connection with approved travel will be considered compensable hours worked for employees. Employees will be compensated for actual hours worked, less usual meal and commute time.

(b) One day travel out of town or as part of the day's work activities will be counted as hours worked, excluding the employee's usual meal period and normal travel time to and from the employee's residence and work location where the day's travel starts and/or ends at the employee's residence.

(c) For overnight travel out of town, a nonexempt employee will be paid a minimum of eight (8) hours for each normally scheduled workday. Any work, including travel, that an



employee is required to perform while traveling, other than on a normally scheduled workday, will be counted as hours worked.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 608. Compensation Upon Employment Separation**

(a) Final compensation shall be inclusive, up to the hour and date of separation of hours worked and all forms of accrued but unused time deemed compensable. Deductions will be made against compensation such as any mandatory or voluntary deductions, including legally authorized offset against pay.

(b) Separated employees will receive their final paychecks on the day paychecks are normally distributed.

(c) In the event of an employee's death, the employee's beneficiary as shown in personnel records shall be entitled to receive the employee's final paycheck, except where the beneficiary is a minor, in which case the Nation may hold the employee's final paycheck until a legal recipient can be identified by the Nation.

(d) Any property issued to the employee by the Nation must be returned before or at the time the final paycheck is provided. Otherwise, the Nation will withhold the final paycheck and other reimbursements until the property is returned or replaced.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 609. Severance Pay**

(a) A supervisor may request to provide two (2) week severance pay, in lieu of retaining the services of an employee for the two (2) week period upon receipt of advance notice of resignation or the Nation may provide two (2) weeks severance pay in lieu of a two (2) week dismissal notice, provided that:

- (1) The employee is not on probation;
- (2) The employee leaves in good standing; and
- (3) The Director of Human Resources authorizes the Payroll Office to disburse.

(b) The Nation has the sole discretion to determine whether to grant a request submitted pursuant to section 609(a).

(c) Limitation on Severance Pay. Employees, who are terminated as a result of misconduct for violation of the law or work rules, or while on probation, are not eligible to receive severance pay

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **Section 610. Performance Evaluations**

(a) The Director of Human Resources shall promulgate the process and procedures for performance evaluations to ensure regular reports are made as to the competence, efficiency, adaptation, conduct, merit, and other job-related performance conditions of the Nation's employees.

(b) Annual Performance Evaluation. Supervisors shall be responsible for the completion of an annual evaluation up to ten (10) days prior to the employee's annual review date.

(c) An employee who has not received an annual evaluation within thirty (30) days after his or her scheduled annual review date may be eligible to receive a merit pay increase in a range of 0% to 4% as approved by Tribal Council, not to surpass the maximum rate of his or her pay range, if the following criteria have been met:

- (1) The employee has had no disciplinary action placed in his or her personnel file since the previous evaluation date.
- (2) The employee's previous evaluation met the criteria for a merit increase. If the employee has not received an evaluation since working with the Nation, assuming the employment has been continuous, it will automatically be assumed that the employee has met the evaluation criteria to receive a merit increase.
- (3) The employee is not currently on a temporary reassignment, any type of leave of absence, layoff or other event that would affect the employee's annual review date.
- (4) The Nation has not imposed any temporary across-the-board payroll restrictions that would suspend merit increases for all employees.
- (5) If the above criteria are met, the necessary documentation will be generated, signed and processed by the Human Resources Department granting the employee a pay increase effective the date that the employee's annual review date was due.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **Section 611. Other Workplace Policies**

(a) Outside Employment. Employees may hold employment outside of their position with the Nation subject to the following restrictions:

- (1) The employees' activities and conduct away from their regular position must not compete, conflict with or compromise the employer's interests or adversely affect job performance and the ability to fulfill all responsibilities due to the employer. This requirement, for example,

prohibits employees from performing any services for tribal customers on nonworking time that are normally performed by tribal personnel. This prohibition also extends to the unauthorized use of any tools or equipment and the unauthorized use or application of any confidential trade information or techniques. In addition, employees are not to solicit or conduct any outside business during paid working time.

- (2) All employees, including part-time employees, must obtain prior approval from the HR Department before any outside employment or other work activity is undertaken. Failure to do this will result in disciplinary action, including possible termination.
- (3) Notice to the supervisor of the second job must be provided in writing before the employee commencing work at the second job.
- (4) Employees may not hold second job with other entities of the Seminole Nation as this could result in an overtime situation.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 612. Confidential Information**

(a) Confidential information obtained as a result of employment shall not be used by an employee for any private interest, or personal gain, including employment verifications.

(b) Employment-related records and information are confidential and proprietary documents of the Nation. No person shall view or have access to personnel records or information without written consent of the employee.

(c) No confidential document or information shall be divulged to any person who does not possess the legal or operational right to know.

(d) All employees shall be required to sign a Confidentiality Agreement as a condition of employment.

(e) Use or disclosure of confidential information may result in civil or criminal penalties, or employee discipline, up to and including termination.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 613. Unlawful Conduct in Labor Controversies**

It shall be unlawful for anyone to picket, or induce others to picket the establishment, employees, supply or delivery vehicles, or customers of anyone engaged in business or to interfere with the person's business, or interfere with any person or persons desiring to transact or transacting business with the person when a labor dispute exists.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 614. Garnishments**

While, as a sovereign government, the Nation is not bound by non-child support garnishment orders of state, municipal, or tribal courts, other than the Nation's Tribal Court, the Nation as a matter of policy has chosen to honor certain garnishment orders.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 615. Unemployment Compensation**

Although the Tribe is not required by law to provide unemployment compensation insurance, it is nonetheless provided and is paid for entirely by the tribe.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **CHAPTER SEVEN EMPLOYEE BENEFITS**

### **Section 701. General**

The Nation reserves the right to add, eliminate, or in other ways modify any discretionary benefits based upon the Nation's capacity to fund the benefits.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

### **Section 702. Benefits & Leave**

(a) **Mandatory Benefits.** The mandatory benefits offered by the Nation will apply to regular employees, whether exempt or nonexempt status, unless otherwise provided in a particular benefit plan or employment agreement/contract.

- (1) **Social Security.** Social Security benefits are automatically deducted from an employee's payroll check.
- (2) **Worker's Compensation.**
- (3) **Unemployment Insurance.** Employees may be eligible for unemployment benefits upon termination of service with the Nation.

(b) **Discretionary Benefits**

- (1) **Benefit Plans**
  - (A) **Group Healthcare Plans.** The Nation makes available healthcare plans for eligible employees and their dependents. Benefits consist of routine medical care, hospitalization, medical prescriptions, vision, and dental plans.
  - (B) **Life insurance plans.** (Basic and Voluntary)
  - (C) **A 401k Plan** for retirement benefits.
  - (D) **Other benefits** may be added as necessary.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 703. Leave Benefits**

(a) Part-time employees shall earn paid leave at 50% of the benefits of the full-time employee.

(b) Full-time employees shall earn the full accrual for each 80 hour pay check worked. Regular hours worked, plus any paid leave constitutes “a full 80 hour” pay check. Leave will be pro-rated according to the number of hours worked.

(c) Restitution. If the existence of fraud by any person resulting in benefits to which he/she was not entitled has been found by any court of competent jurisdiction, such person shall be liable to repay such amount to the Seminole Nation or to have such sum deducted from any future benefits payable to him or her under said laws.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

#### **Section 704. Seminole Nation Holidays**

(a) All employees (regular or part-time) are eligible to observe the following recognized holidays:

- (1) Martin Luther King’s Birthday;
- (2) President’s Day;
- (3) Good Friday;
- (4) Memorial Day;
- (5) Independence Day;
- (6) Labor Day;
- (7) Native American Day (Monday following Seminole Nation Days);
- (8) Veterans Day;
- (9) Thanksgiving Day – this holiday shall include Thursday and Friday;
- (10) Christmas Holiday – this holiday shall be subject to the following provisions:
  - (A) Christmas on Monday – Christmas and Tuesday
  - (B) Christmas on Tuesday – Christmas and Monday
  - (C) Christmas on Wednesday – Christmas Eve ½ day, Christmas and Thursday
  - (D) Christmas on Thursday – Christmas Eve ½ day, Christmas and Friday
  - (E) Christmas on Friday – Christmas Eve and Christmas

- (F) Christmas on Saturday – Christmas Eve and Christmas
- (G) Christmas on Sunday – Christmas and Monday;
- (11) New Year's Day – this holiday shall be subject to the following provisions:
  - (A) New Year's Day on Monday thru Friday – New Year's Day only
  - (B) New Year's on Saturday – Friday holiday
  - (C) New Year's on Sunday – Monday holiday;
- (12) Birthday Holiday. All regular full-time and part-time employees are authorized to view their birthday as a paid holiday. The employee shall notify the program director/supervisor if the employee is not able to take the day of the birthday off. This holiday shall be subject to the following provisions:
  - (A) Birthday on Sunday – Monday holiday
  - (B) Birthday on Saturday – Friday Holiday
  - (C) Birthday on Monday – Friday – Birthday Day Only
  - (D) Birthday on Holiday observed by the Seminole Nation – Sole Discretion of the director/supervisor to allow appropriate time off for the holiday.

(b) Holidays occurring on Sunday, are observed the following Monday. Holidays occurring on Saturday are observed the preceding Friday. Employees in service positions which include weekend and holiday work, may exchange days taken for holidays if they worked on a recognized or declared holiday. Employees may claim compensatory time for work on a holiday.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 705. Holiday Pay**

- (a) Nonexempt employees will be paid double pay if required to work on a holiday. If a person does not work, he or she will receive eight (8) hours holiday pay at his or her regular rate.
- (b) Exempt employees will be paid their regular salary on the holidays whether or not they work.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

**Section 706. Paid Time Off**

(a) Paid Time Off. Eligible employees accrue paid time off (PTO) for each full week of service in which the employee is actively employed and in a paid status. No PTO may be taken in advance of being earned. PTO will not be accrued if employee has been suspended for disciplinary action or is on approved extended leave, other than annual/sick/comp leave.

(b) Any accrued hours of PTO over one hundred twenty (120) will be paid to the employee at the end of the fiscal year provided that the employee has used sixty (60) hours of annual leave during that fiscal year.

(c) Selection of leave dates is subject to approval of the employee's supervisor and must be made at least ten (10) working days prior to the start date when feasible, unless otherwise approved by the supervisor.

(d) Regular employees will retain leave upon transfer or promotion when allowable according to federal or state funding.

(e) Pay in lieu of unused annual leave may be provided as follows:

- (1) For emergencies, which may include death in the family, urgent medical care of self or family, and when approved in advance by a member of the Executive Office. The employee will need to submit the Annual Leave Cash Out form to the Executive Office for approval. (Addendum December 3, 2009)
- (2) Employees who terminate employment prior to completing their three-month introductory period of employment are not eligible for payout of accrued PTO following termination.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

**Section 707. Sick Leave**

(a) Sick leave is a privilege of paid time away from work where such absence is necessary because an employee is incapacitated by sickness, temporary disability, injury, or for medical, dental or optical examination or treatment; or where, by reason of exposure to a contagious disease would jeopardize the health of others.

- (1) Full-time employees shall accrue paid sick leave per pay period at a pre-determined rate.
- (2) No sick leave may be taken in advance of being earned.



- (3) Illnesses extending beyond accrued sick leave will be charged as annual leave, if available.
- (4) Sick leave may also be taken for illness in the employee's immediate family, or in the case of an FMLA event. Immediate family is defined as: parent, grandparent, sibling, child, step relations, and spouse or cohabitant.
- (5) Regular employees will retain all sick leave upon transfer or promotion or as allowable with applicable laws.
- (6) Eligible employees must promptly notify their supervisors whenever the use of sick leave becomes necessary.
- (7) A supervisor may require an employee to produce evidence (attending physician or medical provider's statement, death certificate, employee's affidavit, etc.) to substantiate the reason for or length of sick leave.
- (8) Employees will not be allowed to receive pay in excess of 40 total hours per week in which an employee is compensated for any form of leave is taken during that pay period.

(b) Medical Release as a Condition to Return to Work. Employees are not allowed to return to work after an injury, disability or other serious health condition related absence of more than three (3) workdays, or where any absence is caused by a contagious condition of a threatening nature to others, without the written medical release of a qualified physician. The Nation reserves the right to have such employees examined by a paid physician of the Nation.

(c) Abuse of Disability Provision(s). Employees who are found to have abused or fraudulently used temporary disability provisions will be subject to disciplinary action, including, but not limited to, termination.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

#### **Section 708. Transfer of Leave Time**

(a) Employees may transfer leave hours to another employee within the same department and paid from the same funding source, which is eligible to use accrued leave hours. This policy does not apply to an employee who has given notice of resignation or an employee being separated because of lay-off or termination.

- (b) To be eligible to receive these hours an employee must meet the following criteria:
- (1) Have exhausted all available leave hours.
  - (2) Not receiving any other type of pay (i.e., Short Term Disability, Worker's Compensation, etc.).

- (3) Approval of his or her supervisor, where applicable.
- (c) To be eligible to transfer hours, the donating employee must meet the following criteria:
  - (1) Execute a voluntary option of consent with signature and a specific number of hours donated/transferred.
  - (2) Maintain a minimum balance of 24 hours in his or her respective donating leave account.
  - (3) Approval of his or her supervisor, where applicable.
  - (4) This policy is strictly voluntary and no employee shall be required to transfer accrued leave time.
  - (5) In the event that an employee decides to transfer his/her accrued leave time, such leave time shall not be recovered and the employee will be eligible to utilize only hours that he/she has remaining and thereafter accumulates.
  - (6) Any leave transferred that violates this policy shall result in the transferred leave being revoked from the receiving employee.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

#### **Section 709. Funeral Leave**

(a) For the funeral of family relations, the following family relations will be recognized under this policy as blood relations (unless defined as step relations): Spouse, cohabitant, children (biological, adopted, foster and step) parents, aunts, uncles, grandparents, siblings and grandchildren.

(b) All employees, including initial probationary employees, are eligible for paid funeral leave. One (1) day of unpaid leave will be allowed for attendance at funerals of extended family relatives or community members. An employee may use other earned or accrued leave if requested and approved by the employee's immediate supervisor. Funeral leave will be granted to employees for leave with pay for a maximum not to exceed four (4) calendar days (32 hours) following the death in the immediate family spouse, cohabitant, children (biological, adopted, foster and step), parents, siblings and grandchildren, grandparents and in-laws.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; amended by TO 2015-06, July 25, 2015.]

## **Section 710. Cultural Leave**

(a) Enrolled members of the Seminole Nation, or other federally recognized tribes, may request time off to attend cultural and traditional events.

(b) The time off for cultural leave will be leave without pay, unless the employee requests annual leave.

(c) The employee must submit a Leave Application Form for time off at least fourteen (14) days in advance.

(d) The supervisor shall comply with this policy to accommodate requests for time off in compliance with this policy. Additional staffing and training necessary to support all cultural leave requests shall be made available in the event that multiple requests from the same work area may be accommodated “without causing disruption” of the business enterprises.

(e) If an employee who schedules time off for a cultural event abuses and violates this policy by not attending the cultural event, then the employee shall not be eligible to request time off for a period of ninety (90) days. For a second similar violation of this policy, the employee shall not be eligible to request time off for a period of 180 days.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **Section 711. Jury Duty and Witness Leave**

(a) Jury Duty. Employees are to notify their supervisors promptly upon receipt of a jury summons and subsequent notice of selection to serve as a juror. An employee selected to provide this community service will receive his or her regular rate of pay for normal hours worked, up to a maximum of 10 workdays, provided the employee submits evidence of the summons and selection notice. Employees will be allowed to retain any mileage and other compensation paid by the court. No employee will be subject to discrimination, harassment or retaliation for his/her jury service.

(b) Witness Duty. Employees will be paid leave for the time required to provide testimony in work related litigation or court proceedings. Employees are to notify their supervisor immediately upon receipt of a job-related subpoena.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **Section 712. Military Leave**

(a) An employee who enters active duty in a branch of the U.S. Armed Forces or is a member of the Reserve Components of the U.S. Armed Forces who attends annual training, active duty for training, or is called to active duty will be granted military leave.

(1) To be entitled to military leave an employee must present official orders requiring attendance for a period of training or other active duty as a member of the Armed Forces.

(2) An employee may use accrued annual leave.

(b) Unpaid Military Leave. Unpaid military leave applies only to those employees who are eligible for paid supplemental military leave and decline to take either annual leave or paid supplemental military leave. It may only be used for 15 days or less.

(c) Unpaid Military Leave of Absence. Unpaid military leave of absence will be granted to an employee for extended periods (beyond 15 days) of active duty supported by published official military orders. The following periods of active duty qualify for unpaid military leave of absence:

- (1) An employee who is inducted into or enlists in an Active Component of the Armed Forces of the United States.
- (2) An employee who is a member of the Reserve Components attending any of the following duty:
  - (A) Initial Entry Training (i.e., basic training).
  - (B) Active Duty for Training (i.e., military schooling).
  - (C) Called to federal active duty by the President of the United States during a national emergency (i.e., mobilized).
  - (D) Called to state active duty by the Governor during a state emergency.

(d) Employees returning to work are entitled to the same seniority, status, and pay they would have received had they not entered military service. Employees returning from military service may not be terminated from re-employment except for cause during their first year of re-employment.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 713. Educational Leave**

(a) Employees may request leave with pay for no more than 24 hours per month for attending educational courses/classes.

(b) Requests for educational leave shall be made at least 30 days before class/course starting date. Tuition reimbursement is permissible where allowable by funding and granted at the discretion of the department Executive Director based upon factors including applicability of the course material, length of service and quality of performance and availability of funds. Reimbursement will be contingent upon successful completion of a class/course with grade point average of 2.0 or better and availability of Tribal/program educational funding included in the respective budget. Reimbursement is limited to tuition only and for only the classes/courses

approved by employee supervisor. Reimbursement of educational costs will not exceed six (6) credits per semester or quarter of an academic year. All final grade transcripts will be provided before reimbursement is made.

(c) Professional Continuing Education Credits. All professional staff members are responsible to meet mandated Professional Continuing Education Credits. Reimbursable costs shall be all tuition, registration fees, textbooks, class supplies, time, travel, lodging and meals if applicable to retaining certifications required by that position.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 714. Administrative Leave**

Administrative leave status or normal work curtailment may be granted to employees by the Executive Office. Administrative leave may be used for inclement weather conditions, hazardous working conditions, voting purposes, blood drives and other exceptional circumstances. Administrative leave is considered paid leave unless otherwise specified by the Executive Office.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 715. Family Medical Leave**

(a) The Seminole Nation will provide up to twelve (12) weeks of unpaid, job-protected leave referred to as Family Medical Leave (FML) for “eligible” employees to attend to certain family medical matters. All FML requests must be submitted to and approved by the Human Resources Department.

(b) To be eligible for FML, the employee must have worked for the Nation for at least twelve (12) months and have worked at least 1,250 hours during that twelve (12) month period.

(c) If an employee does not meet the eligibility criteria noted above, the FML pending window can close sooner than the usual 15-day pending period.

(d) If an employee and supervisor fail to notify the Human Resources Department that an employee is past FML pending stage and has not been approved for FML use, disciplinary action, including termination, can occur. FML paperwork must be turned in by the due date specified or FML may be denied by the Nation.

(e) Leave Schedule

(1) FML permits the employee to take either full-time off or intermittent leave (in one-hour increments). Upon request for FML, schedule of time off must be stated, or otherwise, the employee will be reported as using full-time FML.

- (2) An employee may change his or her FML schedule when medical improvements occur; provided that the HR Department is notified prior to the schedule change.
- (3) An Intermittent/Reduced Schedule is permitted when such schedule does not unduly disrupt the Nation's operations and when either of the following circumstances occurs:
  - (A) When medically necessary to care for a seriously ill family member with a foreseeable medical treatment schedule is established for the employee.
  - (B) When an employee with a serious medical condition is medically released by the transfer of the employee temporarily to an alternative job with equivalent pay and benefits that better accommodate the employee's recurring periods of leave.
  - (C) To care for a newborn or newly placed adopted or foster care child, as approved by the employer.

(f) An employee who fails to keep the HR Department and his or her supervisor current on his or her medical status while on FML may be denied possible extensions of any leave time.

(g) An employee who fails to report promptly for work at the expiration of the FML will be considered to have voluntarily resigned with the exception of an employee with a Worker's Compensation claim.

(h) The FML must run concurrently with any short-term disability, annual leave, sick leave, Worker's Compensation and/or an unpaid leave of absence as applicable.

(i) Leave Entitlements

- (1) Such leave entitlements shall not include ailments that do not constitute "serious health conditions" as described in paragraph (b), below. This includes, but is not limited to, general work-related stress, common colds, earaches, the flu, headaches other than migraines, upset stomach, minor ulcers, routine dental, orthodontic or periodontal problems.
- (2) Leave entitlements do include the following reasons: the birth of a child, and to care for the newborn child; placement with the employee of a child for adoption or foster care, and care for the newly placed child; care for an immediate family member (spouse, child, or parent-but not a parent-in-law) with a serious health condition; and when the employee is unable to work because of a serious health condition.

(j) Maintenance of Health Benefits

The Nation shall maintain group health insurance coverage, including family coverage for an employee on the Nation's FML. During the leave, the Nation will pay both the employer's and employee's premium during the week(s) the employee does not receive a payment from the Nation. The maintenance of the health benefits stops if and when an employee informs the Nation of intentions not to return to work at the end of the leave period, or if the employee fails to return to work when the leave entitlement is exhausted. The employee will be required to reimburse the Nation for any voluntary premiums paid by the Nation during the absence upon the employee's return to work.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 716. Unpaid Leave of Absence**

(a) An employee with more than twelve (12) months of continuous full-time service may be eligible for an unpaid leave of absence for a period not to exceed three (3) months. All requests must be approved by the Human Resources Department and the Executive Office. An Unpaid Leave of Absence may be granted for the following reasons:

- (1) Continued illness or personal reasons, which extend in time beyond available annual or sick leave, or FML. During an unpaid leave of absence for medical reasons, health benefits will continue for up to ninety (90) days;
- (2) Advanced training, higher education, or research, which will increase employability and job skills that are in the best interests of the Seminole Nation. Employees will be responsible for maintaining or discontinuing any employment related discretionary insurance benefits with the Nation.
- (3) Upon expiration of the unpaid leave of absence, the employee shall be reinstated in the position held at the time this leave was granted. An employee who fails to promptly report to work at the expiration of such leave will be considered to have voluntarily resigned.
- (4) Under no circumstances will Departments be allowed to announce the position and hire a probationary employee as if there was an official vacancy.
- (5) Credit for paid time off and sick leave will not accrue during an approved unpaid leave of absence.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **CHAPTER EIGHT**

### **WORK RULES, EMPLOYEE CONDUCT, DISCIPLINE, AND ADMINISTRATIVE REVIEW**

#### **Section 801. General Hours of Work and Attendance**

(a) Due to the varying nature of Tribal business and service needs, no single work schedule can be established for all employees. Directors, upon consultation with supervisory personnel will determine operational days and hours of work, or the modification thereof. General working times for Administration and Programs are Monday-Friday, 8:00 a.m. to 5:00 p.m., unless altered or approved by the Executive Office.

(b) Work schedules will be established for each employee by supervisory personnel who may change schedules based on the needs and requirements of work operations. Supervisory personnel may also require an employee to work an unscheduled day and the day worked shall be treated as modified work schedule and not be subject to overtimes compensation. Flex-time scheduling may be approved by the Executive Office on a case-by-case basis.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 802. Attendance**

(a) Employees are required to report to their designated work locations and clock in/out at the prescribed time and manner in which work is to commence. Tardiness, unexcused absence or failure to report absence as required may result in disciplinary action.

(b) In the event an employee cannot report to work as scheduled, the employee must notify supervisory personnel at least thirty (30) minutes prior to the scheduled work shift.

(c) In all cases of an employee's absence or tardiness, the employee shall provide supervisory personnel with a valid reason for the absence and, if applicable, the probable duration of absence.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 803. Excessive Absenteeism**

Excessive absenteeism, which renders an employee unavailable for work, will be evaluated on a case-by-case basis to determine the merits of disciplinary action or termination.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

#### **Section 804. Abandonment of Employment**

An employee who is absent from his or her assigned work location without authorized leave for three (3) consecutive days shall be considered absent without authorized leave, and as having abandoned his or her employment. The employee shall be automatically terminated, unless the



employee can provide the Nation with acceptable and verifiable evidence of extenuating circumstances justifying the absence(s).

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 805. Personal Appearance/Clothing Attire**

(a) Every employee contributes to the overall public image of the Nation and its workforce during working hours. Appropriate attire enhances an employee's effectiveness in providing superior service. Each employee personally represents the Nation and is required to dress and groom in a manner appropriate for his/her work area. Blue jeans are strictly prohibited unless required by position or approved by the Executive Office for "casual day."

- (1) Employee Badges: Badges should be visible at all times. Name tags may not be worn outside the workplace.
- (2) Personal Hygiene: Employees must practice good personal hygiene at all times and should not wear deodorants, perfumes or aftershaves in excessive amounts that may be offensive to guests or co-workers.
- (3) Business Attire: Employees are expected to wear "casual business attire."
  - (A) This includes slacks, collared shirts or dress shirts with a tie for male employees, unless employed in specified positions which would require blue jeans and/or uniforms.
  - (B) A dress collared "polo shirt" is also acceptable if worn with khaki or dress slacks. Female employees are expected to wear slacks, skirts, blouses, dresses and/or jackets.
  - (C) Camisoles and other tops that show cleavage or midriffs are not permitted.
  - (D) Shoes should be appropriate to the work environment, and some areas may prohibit open-toe shoes for reasons of safety. Flip flops or thong type sandals should not be worn.
  - (E) Under normal business/clerical operations blue jeans are not allowed, unless specified for "Employee Casual Day" or Employee Event team fundraisers. Tee shirts are not allowed, unless specified for a certain program event.
- (4) The employee's immediate supervisor monitors adherence to the dress code. If an employee reports to work dressed or groomed inappropriately, the immediate supervisor is responsible for sending the employee home to change and the employee will not be compensated for that time.

(b) If abuse of the personal appearance policy continues, the employee's immediate supervisor may use corrective action as appropriate, up to and including termination, after consultation with the HR Department.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 806. Employee Conduct**

(a) Employees are responsible and accountable for adhering to all Tribal laws, policies, rules, directives, and procedures enacted and established by the Nation.

(b) Employees who engage in, or are associated with illegal or criminal conduct, the nature which adversely affects the Seminole Nation, or their ability to carry out their employment responsibilities, will be subject to disciplinary action, including termination.

(c) Information about the Seminole Nation, its customers, clients, suppliers, or employees shall not be disclosed or divulged to anyone other than persons who have a right to know or are authorized to receive such information.

(d) The Nation reserves the right to deny services and entry onto the Nation's property to members of the public, visitors, and employees who are physically and/or verbally abusive or disruptive of services and operations. The Nation additionally reserves the right to deny entry onto Tribal properties or access to services to all employees and/or members of the public whom they determine may be under the influence of alcohol, controlled substances, and/or illegal drugs.

(e) Unacceptable Conduct. The following non-exhaustive list of employee acts, activities and behavior constitute unacceptable conduct:

- (1) Improper or unauthorized use of paid or unpaid leave.
- (2) Being absent without authorized leave or repeated unauthorized late arrival or early departure from work.
- (3) Willful or negligent violation of the ERC, Seminole Nation law, unit operating rules, or related directives.
- (4) Refusal to accept reasonable and proper assignments or failure to carry out a direct order from a superior, except where the order is illegal or the employee's safety may reasonably be jeopardized by the order.
- (5) Soliciting or accepting gifts or compensation in exchange for influence, contracts, access to information, people or facilities.
- (6) Engaging in a conflict of interest activity.

- (7) Conduct that discredits the employee or the Nation, or willful misrepresentation of the Nation. An employee may not present himself or herself as a representative of the Nation, or communicate with the news media on behalf of the Seminole Nation unless authorized or directed in writing by the Seminole Nation or its delegated representative(s).
- (8) Conviction of a crime during employment, including convictions based on a plea of nolo contendere or involving moral turpitude, the nature of which reflects the possibility of serious consequences related to the continued assignment or employment of the employee. Failure to report a criminal charge or a conviction to the HR Department may result in disciplinary action up to and including termination.
- (9) Knowingly falsifying, removing, or the destruction of information related to employment, payroll, or work-related records or reports.
- (10) Soliciting outside work for personal gain during business hours; engaging in off-duty employment for any business under contract with the Seminole Nation; participating in any off-duty employment that adversely affects the employee's performance of work for the Nation; and engaging in unauthorized off-duty employment.
- (11) Conduct that interferes with the management of Tribal operations.
- (12) Violation of or neglecting safety rules, or contributing to hazardous conditions.
- (13) Unauthorized removal, negligent, or improper use of any Tribal property, equipment, or funds or that of its clients, customers, or agents. This includes the private use, use that creates an unreasonable risk of damage to property, theft, embezzlement or conversion for personal use of Tribal funds or property.
- (14) Physical altercations or creating a disturbance among fellow employees that would result in an adverse effect on morale, productivity, and/or the maintenance of proper discipline, i.e. wrestling, rough housing, and horse play.
- (15) Making false, malicious, or unfounded statements against co-workers, supervisors, subordinates, government officials, or the Seminole Nation, which tend to damage the reputation or undermine the authority of the Seminole Nation.
- (16) Conducting personal business during work time.
- (17) Inefficiency, incompetency, or negligence in the performance of duties, including failure to perform assigned tasks or training, sleeping on the job

or failure to discharge duties in a prompt, competent, and reasonable manner.

- (18) Refusal or inability to improve job performance in accordance with written or verbal direction after a reasonable trial period, not to exceed thirty (30) days, which is specified in writing.
- (19) Employees may not engage in coercion, nor be subject to coercive tactics that constitute a deprivation of legally protected rights.
- (20) Offering or accepting political rewards as consideration for the political support of any party or candidate for public or Tribal office. Upon proof of such reward, disciplinary action will be taken, which may result in termination or removal.
- (21) Driving under the influence of alcohol or drugs while on duty or the suspension of driver's license where job duties require driving.
- (22) Bringing infants or other dependents to work for the purposes of providing them care and supervision, except in the following circumstances:
  - (A) To accommodate a mother's right to breast-feed an infant during her break periods, provided that a minimum amount of disruption in office functions occurs.
  - (B) To accommodate an employee who works at any of the Nation's facilities where daycare, recreation, or other supervision is provided for infants or dependent children, provided that the employee's work is not disrupted.
  - (C) In all cases, an employee must request approval of his or her supervisor in order to bring a child to his or her workplace under the above circumstances.
- (23) Use of office telephones/cell phones or electronic devices for personal purposes. Personal calls shall be kept to a minimum and long-distance calls shall be reimbursed.
- (24) Participating in, planning, or assisting in any illegal or unlawful activity, which affects the day-to-day operations of the Seminole Nation.
- (25) Unauthorized release of confidential information or official records.
- (26) Misuse of authority or position for personal gain.
- (27) Any other actions considered by the Nation in its sole discretion to be inappropriate, or detrimental to employee working environment.

- (28) Taking employee personnel matters to any public forum.
- (29) Possession of dangerous or unauthorized materials including weapons, ammunition, explosives, or firearms while on Seminole Nation property.
- (30) Discourtesy to clients, customers or other employees.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 807. Employee Discipline**

(a) Employment with the Seminole Nation and each case involving discipline will be handled on a case-by-case basis. All Directors/Supervisors are required to consult with the HR Director prior to imposing discipline. All staff receiving discipline shall be afforded due process.

(b) Types of discipline may include:

(1) Suspension.

(A) Under no circumstances will a suspension exceed ten (10) working days.

(B) It may be necessary to restrict an employee immediately from performing duties at the work site. These circumstances usually involve potential danger to the assets of the Nation, the employee, co-workers or the public, or the employee's inability to discharge assigned duties satisfactorily. In these situations, the issue is to be evaluated on a case-by-case basis and the following procedure is to be followed:

(i) Prior to an employee being suspended, the supervisor taking the action to suspend an employee will immediately notify the HR Director and prepare a written statement of action taken and the reasons for such action.

(ii) The Supervisor will prepare, together with the HR Director, the statement of charges and document any supporting evidence.

(ii) As soon as possible after the initial action, the HR Director will prepare written notification to the affected employee.

(c) In no event will the use of paid time off be allowed during a period of suspension without pay. Should a paid holiday occur during a period of suspension without pay, the

suspension period shall be extended by the number of holidays occurring during the suspension period.

(d) All suspensions shall be unpaid. No employee may be disciplined by issuance of a suspension with pay.

(e) A suspended employee who has been vindicated of any wrongdoing shall be compensated for lost wages and benefits.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2019-01 until a Personnel Board is nominated and constitutes a quorum, January 26, 2019.]

### **Section 808. Termination**

Directors/Supervisors shall notify the HR Department of all personnel issues and disciplinary actions, including recommendations for terminations prior to taking any such disciplinary action.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

### **Section 809. Internal Dispute Resolution Policy**

(a) An appropriate issue for internal dispute resolution is defined as an employee's expressed dissatisfaction concerning any interpretation or application of a work-related policy by management, supervisors, or other employees. Examples of issues which may be considered appropriate under this policy include but are not limited to:

(b) In an effort to provide employees with a method to resolve conflict within the workplace, the Seminole Nation has elected to implement this dispute resolution prior to and, in some cases, in lieu of the grievance process. It is the policy of the Seminole Nation to afford all eligible employees who have been subject to discrimination or harassment a means of having the circumstances of such action reviewed by an impartial and objective mediator. The HR Director will take all reasonable steps to investigate all complaints. The HR Director will conduct mediations by facilitating discussions between parties requesting the assistance of the HR Director in resolving their disputes in accordance with the HR Department's rules and procedures for mediation.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

### **Section 810. Grievances**

(a) Employees may seek administrative review only for alleged discrimination, work related issues and harassment. The Seminole Nation Personnel Board's purpose is to hear employment related issues, known as grievances, in order to efficiently resolve such actions.

(b) The HR Director will take all reasonable steps to investigate any incident, which has resulted in disciplinary action. As Seminole Nation is an employer, all eligible employees who have been subject to suspension or termination cannot grieve their termination.

(c) Initial probationary or temporary employees may not grieve on any matters, save those listed in paragraph (a), above.

(d) Performance Evaluations may not be grieved, and may not be reviewed under the administrative review process.

(e) Employees are entitled to grieve all matters, except termination, to the Personnel Board, if not resolved in the internal dispute resolution process.

[HISTORY: Enacted by TO 2015-06, July 25, 2015; amended by TO 2019-01 until a Personnel Board is nominated and constitutes a quorum, January 26, 2019.]

### **Section 811. Notification of Disciplinary Action**

(a) At the time an employee is notified of disciplinary action, the employee shall be advised of his or her right to a hearing before the Seminole Nation Personnel Board.

(b) Request for a Hearing. An employee must request a hearing within five (5) business days of the date the disciplinary action was taken. At the time the employee requests a hearing, he or she must inform the HR Department if he or she is to be represented by an attorney. If so, the attorney must also file for an appearance with Department of Human Resources within five (5) days of the date the employee requested a hearing. Failure to request the hearing within this time frame will result in the forfeiture of a hearing by the Board.

(c) Any reference to improper or overturned disciplinary action may be removed from the employee's personnel file, or notice that such disciplinary action was overturned will be clearly noted on the record of such action such that it cannot be used in progressive discipline or be otherwise held against the employee for future references.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

### **Section 812. Smoking Policy**

(a) It is the policy of the Nation to voluntarily comply with all applicable federal and local regulations regarding smoking in the workplace and to provide a work environment that promotes productivity and the well-being of all its employees.

(b) The employer recognizes that smoking in the work place can adversely affect employees. Accordingly, smoking is restricted at all of its facilities, except where designated as a smoking area within 50 feet of any entrance.

(c) The Human Resources Department is responsible for implementing smoking regulations, and supervisors are expected to monitor and enforce such regulations.

(d) Employees are expected to exercise common courtesy and to respect the needs and sensitivities of co-workers. Smokers have a special obligation to keep designated smoking areas litter-free and not to abuse break and work rules. Complaints about smoking issues should be resolved at the lowest level possible, but may be processed through the employer's grievance

procedures. Employees who violate the policy will be subject to disciplinary action.



(e) The employer, however, will not discriminate against individuals on the basis of their use of legal products, such as tobacco.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

**Section 813. Participation in Community Affairs**

(a) It is the policy of the employer to encourage employees to participate in the community service affairs of charitable, educational, religious, fraternal, and civic organizations.

(b) Employee participation in community activities must not adversely affect the employee's job performance, be detrimental to the employer's interests, or place the employee in the position of serving conflicting interests.

(c) Time spent on community affairs, when not undertaken at the request of management, should normally be outside of the employee's regular working hours and, therefore, will not be considered hours of work for pay purposes.

(d) The employer may identify certain community activities in which it wants to be represented, and then designate the employees it will sponsor for participation or membership in such organizations. Employees so designated will represent the employer in the organization and will be expected to promote the employer's interests. Under these circumstances, time spent on the community activity will be considered hours worked for pay purposes.

(e) Employee-initiated participation in community affairs that involves an extended period of time away from the job should be handled in accordance with the provisions contained in the "Leaves of Absence" section(s).

(f) Employees have a responsibility, when expressing opinions in a public forum, to make clear whether the opinion is a personal one or one representing the employer. The Principal Chief or authorized designee must approve, in advance, any public communication that might be considered as representing the employer's position on an issue. Employees are not to engage in discussions concerning band meetings, or any other political topics or to discuss internal confidential affairs in any public forum.

(g) Employees planning to campaign for, seek, or accept appointment to public office must give prior notice of their intentions to their immediate Supervisor and the Human Resources Department. The Human Resources Department will review with the employee the employer's continuing requirements to avoid conflicts of interest and to maintain satisfactory attendance, effort, and performance standards. Employees engaging in political activities must do so as individuals on their own time, not as representatives of the employer, and may make no representations otherwise.

[HISTORY: Enacted by TO 2015-06, July 25, 2015.]

## **CHAPTER NINE**

### **MOTOR VEHICLE OPERATION POLICY**

#### **Section 901. Purpose**

This Motor Vehicle Operation Policy (Policy) is to establish clear responsibilities for employees, supervisors, and managers, and to promote the safe and prudent operations of motor vehicles while performing assigned duties in support of the Nation.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 814 to Section 901 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 902. Definitions**

- (a) “Employee” means any permanent, temporary, intermittent, or contract employee.
- (b) “Motor Vehicle” means any motor vehicle owned, rented, or leased by the Nation, or privately owned, rented or leased, with a gross vehicle weight (GVW) of less than twenty-six thousand (26,000) pounds, designed to transport less than fifteen (15) people, and which does not haul hazardous materials or tow vehicles with a GVW of ten thousand (10,000) pounds or more (e.g. sedans, light trucks, sports utility vehicles (SUVs) and all-terrain vehicles (ATVs)).
- (c) “Motor Vehicle Operator” means an employee who drives a motor vehicle, including commercial motor vehicles, in the performance of their duties and responsibilities.
- (d) “Commercial Operator” means an employee who operates a commercial vehicle and is required to possess a Commercial Driver’s License (CDL).
- (e) “Commercial Motor Vehicle” means a vehicle having a GVW rating of more than twenty-six thousand (26,000) pounds, a vehicle towing a trailer weighing 10,000 pounds or more, a vehicle hauling hazardous material which requires display signs noting the hazardous material content of the vehicle, a vehicle designed to transport fifteen (15) or more people including the driver, or a school bus. Operators of these vehicles must have a valid CDL.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 815 to Section 902 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 903. Driver Qualifications**

- (a) An Employee with a valid employee ID card may be authorized to drive on Tribal business if he or she satisfies the following requirements:
  - (1) Is eighteen (18) years of age or older;
  - (2) Possesses a valid State driver’s license;

- (3) Possesses the requisite experience needed to drive the type of vehicle being assigned or used;
- (4) Has received no convictions or uncontested citations within the three-year period immediately preceding their submittal of the Seminole Nation Driving Request Form, Motor Vehicle Operator's License and Driving Record, for Reckless Driving, Driving While Intoxicated (DWI), Driving Under the Influence (DUI) or Leaving the Scene of an Accident;
- (5) Has not demonstrated a pattern of unsafe driving or behaviors (e.g. drug or alcohol abuse, unusual aggression, etc.) that would cause a supervisor to question the likelihood that the individual will drive safely and prudently while on Tribal business;
- (6) Possesses current motor vehicle operators Authorization from his/her supervisor; and
- (7) Consents to no usage of a cellular phone while operating a motor vehicle.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 816 to Section 903 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 904. Roles and Responsibilities**

- (a) Chief of Staff, Program Directors, supervisory staff, and Program Managers are responsible for carrying out the requirements of this policy within their areas of responsibility.
- (b) Managers, supervisors, and Program Directors must:
  - (1) Carefully consider whether duties and responsibilities assigned to an employee require the operation of a Nation owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately owned or privately leased motor vehicle in the performance of official or contractual duties, responsibilities or activities, including duties of record and other duties assigned or historically assigned to such positions or activities.
  - (2) Ensure that each Tribal motor vehicle operator under their supervision possesses a valid driver's license that indicates State authorization to operate the class of vehicle required in the performance of duties. This responsibility is met by ensuring each employee completes the annual authorization process described in section 906 of this Policy, which includes a requirement to conduct an annual review of the employee's current license and a current motor vehicle driving record. If at any time the supervisor has a concern with an employee's driving record, he or she will initiate a review of the employee's driving record. Failure to meet this responsibility may result in disciplinary action against the supervisor.

- (3) Ensure that all term contracts and commercial contracts under their administration, at the time of contract renewal, include certification from the contractors certifying that they will self-administer and ensure compliance with the requirements of this policy.
- (4) Based on available information, ensure no authorization is given to individuals with restricted driving privileges (i.e., home to work licenses).
- (5) Ensure that no motor vehicle operator is permitted to operate a Nation owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle and/or privately owned or leased motor vehicle in the performance of official duties while:
  - (A) Intoxicated by ingesting controlled substances or consuming intoxicating beverages, including any impairment resulting from the use of prescription or over-the-counter drugs;
  - (B) Impaired by a medical or physical condition;
  - (C) Using a cell phone; or
  - (D) Doing any other act that affects his/her motor skills, reaction time, or concentration.
- (6) Immediately terminate driving privileges for a motor vehicle operator who:
  - (A) Is arrested for, charged with, or convicted of Reckless Driving, Driving While Intoxicated (DWI), or Driving Under the Influence (DUI).
  - (B) Is arrested for, charged with, or convicted of a criminal offense related to a traffic incident involving alcohol or drugs, including but not limited to vehicular homicide, vehicular manslaughter, or endangerment.
  - (C) Is disqualified from holding a State driver's license, including restriction, suspension, revocation, or cancellation of a State driver's license for the type and class of vehicle operated.
  - (D) Upon request, fails to provide a valid CDL medical certificate.
  - (E) Loans the vehicle to an employee or a non-employee who is not eligible for driving privileges.
  - (F) Uses a cellular phone while the motor vehicle is in operation.
- (c) Supervisory staff will take appropriate action when a motor vehicle operator:

- (1) Is convicted for operating a motor vehicle under the intoxicating influence of alcohol, narcotics, or pathogenic drugs.
  - (2) Is convicted of leaving the scene of an accident without making his or her identity known.
  - (3) Is not qualified to operate a Nation owned or leased vehicle safely because of a physical or medical condition.
  - (4) No longer possesses a State license by revocation or suspension.
  - (5) Fails to report incidences noted in paragraph 6 above to his or her supervisor.
  - (6) Exhibits behaviors inconsistent with the safe and prudent operation of a motor vehicle.
- (d) Supervisory staff shall
- (1) Where appropriate, recommend the Alcohol & Substance Abuse Program (ASAP) and other programs to employees whose performance appears impaired by the use of controlled substances, prescription drugs, or intoxicating beverages.
  - (2) Take appropriate actions to investigate allegations of employee's alcohol or drug abuse problem or a history of unsafe driving, regardless of whether or not the employee has ever been charged with an offense. Supervisors may at their discretion, consider a pattern of unsafe driving acts as a factor in determining whether an employee meets driver qualifications. (For example, an employee is convicted of DWI or other unsafe driving practices over a 10-year period, with DWI arrest longer than three-years preceding their submittal of a Seminole Nation Driving Request Form, Motor Vehicle Operator's License and Driving Record).

(e) Employees, generally, have responsibility to inform supervisors of operator incidences or behaviors that would be considered covered by this policy or represent unsafe driving behavior. All employees share an affirmative duty to ensure our vehicles are used properly by responsible individuals who have a high regard for both personal and public safety while operating a Tribal vehicle.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 817 to Section 904 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 905. Operator Requirements**

- (a) Motor vehicle operators must:

- (1) Comply with State, local and tribal traffic laws and the lawful instruction of emergency and law enforcement personnel.
- (2) Abstain from ingesting controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken, to avoid being impaired.
- (3) Not transport intoxicating beverages, controlled substances, or any passenger who is in possession of intoxicating beverages or controlled substances without written approval of immediate supervisor. Exceptions to this prohibition are allowed for social services, emergency, and law enforcement personnel whose duties and responsibilities require otherwise.
- (4) Not transport unauthorized passengers in a Nation owned or leased motor vehicle.
- (5) Report to his/her supervisor any medical or physical condition, including the use of controlled substances, prescription or over-the-counter drugs, which may impair the driver from the safe operation of a motor vehicle.
- (6) Successfully complete motor vehicle safety training at least every three years.
- (7) Notify their supervisor if their State driving privileges are restricted, suspended, revoked, or canceled, or if they have been otherwise disqualified from holding a license. Employees are also responsible for reporting any situation that may alter their authorization or ability to operate a motor vehicle, such as any legal or court ordered suspension of driving privileges or any limiting medical conditions.
- (8) Report all incidents involving a Nation owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or a privately owned or leased motor vehicle that occur during the performance of their official duties.
- (9) Report all on-duty incidents involving a Nation owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or a privately owned or leased motor vehicle that could result in a violation, citation, charge, arrest, warrant, or civil action.
- (10) Report all incidents involving a Nation owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately owned or leased motor vehicle and the use of controlled substances or intoxicating beverages; impairment resulting from prescription or over-the-counter drugs, illness, or medical condition; or other factors that impair concentration, motor skills or reaction time.

- (11) Report any restriction, suspension, revocation, or cancellation of their driver's license, for any length of time, or any disqualification from holding a State, commercial, or international operator's license.
- (12) Notify supervisors of these incidents no later than the following business day after their occurrence. Failure to inform the supervisor of any such situation may subject employees to disciplinary action.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 818 to Section 905 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 906. Authorization Procedures**

(a) All employees and term contract employees whose job requires operation of a motor vehicle must annually request authorization to operate a motor vehicle in carrying out the duties of their positions.

(b) All employees and term contract employees must annually submit to their supervisor a Seminole Nation Driving Request Form, Motor Vehicle Operator's License and Driving Record to renewal. In completing the form, individuals will provide a response to all questions (Section II) and certify that their statements are true and correct to the best of their knowledge (Section III).

(c) Supervisors will review the Driving Request Form for accuracy and completeness, complete and sign Section IV – Supervisory Review, and forward to the appropriate safety office for the receipt of application.

(d) The appropriate safety office will review the submitted forms and request a copy of the applicant's driving record from the appropriate State motor vehicle office(s) and if appropriate and where feasible, the tribal court where employees primarily operate motor vehicles within that tribal jurisdiction.

(e) Upon a receipt of a favorable review of the driving record, the safety officer will complete Section V – Certification of Eligibility and Authorization, sign and date, certifying that the individual meets Tribal driver qualifications.

(f) Supervisors are reminded that they may be personally liable if they authorized an employee to operate a motor vehicle on Tribal business if an employee is determined not to be qualified by virtue of failing to meet qualification standards.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 819 to Section 906 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 907. Failure to Report Incidents Involving Motor Vehicles**

Failure of the motor vehicle operator to report such incidents of traffic citations or accident violations to the supervisor as soon as possible after the occurrence, but no later than the next business day may result in disciplinary or other adverse action.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 820 to Section 907 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 908. Motor Vehicle Operation Policy Guidance**

(a) All positions must include a determination, in consultation with the appropriate Human Resources Office, of whether the incumbent of the position will be required to have a valid driver's license, possibly with endorsements, because of the requirement that they regularly operate Tribal vehicles or equipment to perform the duties of the position they encumber. Alternately, certain positions that may require occasional driving, but not regular driving must be designated as such. The following conditions apply to positions that require regular driving and the position descriptions for these positions must incorporate these requirements:

- (1) Applicants for such positions cannot be officially hired until it is determined that their driving record would not preclude their driving of Tribal vehicles. This shall be based on a review of an applicant's driving record; the applicant will provide an original abstract or document evidencing their current driving record from their state of residence for which the applicant is responsible for the cost.
- (2) Incumbents of such positions who cannot be authorized to drive because of a conviction for an offense listed in section 904(b)(6) of the Policy, cannot remain in the position they encumber and necessary corrective action must be taken to resolve the employee's inability to drive. The determination of the appropriate corrective action shall be made in consultation with the Human Resources Office.
- (3) The driving privileges of incumbents of such positions arrested for an offense listed in section 904(b)(6) shall have their driving privileges immediately terminated.

(b) Reckless driving convictions or arrests resulting from a drug or alcohol related offense require compliance with the wording of the Policy in section 904(b)(6). Reckless driving offenses unrelated to drugs or alcohol will be considered as not requiring mandatory termination of driving privileges, but under the standard of whether or not the supervisor determines the employee is an unsafe driver based upon the employee's driving or criminal record for the 10 years preceding submittal of the Driving Request Form, that would cause a supervisor to question the employee's ability for safe and prudent driving while on Tribal business.

(c) If a motor vehicle operator's driving privileges are terminated upon a DUI charge pending conviction and if the Operator cannot perform required job duties without driving, the employee may be temporarily accommodated, if practical, through:



- (1) Temporary revision of job duties. A revision of job duties will be deemed practical if the employee can perform the majority of job duties without driving.
- (2) A temporary re-assignment to an available position that does not require driving. A determination of practicability for re-assignment will be whether or not the employee meets minimum qualifications for re- assignment to an available position.
- (3) Administrative leave only if a revision of job duties or a re-assignment is not practical due to a concern that the employee would potentially cause harm to Tribal equipment, records or other individuals.
- (4) An indefinite suspension of the employee if the charge could result in the employee facing incarceration in a State, Federal or Tribal facility for any length of time.

(d) A reasonable time frame for a temporary revision of duties, re-assignment, administrative leave or suspension period is 120 days. If the charge causing the termination of driving privileges is not resolved within 120 days, the employee's supervisor will consult with the Human Resources Office to initiate corrective action.

(e) Upon a final conviction of an employee that must drive to perform job duties and therefore no longer meets the requirements of the position the employee permanently encumbers, the supervisor will commence taking corrective action by contacting their servicing Human Resources Office.

(f) If the charge is defeated, the employee will be reinstated to original position with driving privileges restored, provided the employee does not have other arrests or convictions that would preclude them from being authorized to drive. If the employee had been on an indefinite suspension, the employee will not be compensated for wages lost.

(g) No supervisor may authorize/allow an employee to drive/operate any Tribal vehicle without the written concurrence of the appropriate Safety Officer.

(h) The Policy requires managers and supervisors to ensure that all term contracts and commercial contracts under their administration, at the time of contract renewal, include certification from the contractors certifying that they will self-administer and ensure compliance with the requirements of this policy. For P.L. 638 Contacts and Self-governance compacts, the Policy does not apply unless the contract includes a provision mandating compliance with the Policy.

(i) While a Tribal Court has no ability to revoke a State issued driver's license, all employees are required to report all driving related charges and/or convictions in Tribal Courts on the Driving Request Form. The appropriate safety office will review the submitted forms and request the applicant's driving record from the appropriate State motor vehicle office and appropriate Tribal Court. If the Tribal court refuses to provide the applicant's driving record to the safety office, the safety office will request that the employee/applicant submit a written

request to the appropriate Tribal court within 10 days of the safety office's request. The employee/applicant must provide a copy of the written request to the safety office also within 10 days. A failure or inability to obtain actual court records will not preclude taking corrective action for an arrest or conviction, an employee's report of such an offense is sufficient to proceed with corrective action.

(j) The Policy mandates that managers and supervisor must:

- (1) Carefully consider whether driving is necessary for all positions and amend position descriptions accordingly.
- (2) Ensure that each tribal motor vehicle operator meets requirements for authorization while on Tribal business.
- (3) Conduct annual review of the employee's current license and current motor vehicle driving record.
- (4) Enforce the Policy.

(k) Any manager or supervisor who fails to comply with the requirements and enforcement provisions of this Policy will be subject to disciplinary action or adverse action.

(l) The following reporting requirement for all supervisors is immediately imposed: supervisors will report within one business day, through their chain of command, any and all arrests or convictions of a subordinate employee that impacts their ability to operate a Tribal vehicle. Each Program Director will maintain an active listing of affected employees, which shall be readily available, with a current updated status.

[HISTORY: Enacted by Ordinance TO 2008-08, April 8, 2008; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 821 to Section 908 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TEN TRAVEL POLICY**

### **Section 1001. Purpose**

The purpose of this Chapter is to establish general travel policies for the Seminole Nation of Oklahoma. These general policies provide overall direction for the development of detailed financial management and reporting requirements for travel on official business of the Seminole Nation.

[HISTORY: Enacted by TO 2008-09, April 8, 2008; amended by TO 2013-11; renumbered by TO- 2015-06, July 25, 2015; renumbered from Section 901 to Section 1001 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 1002. Applicability**

This Chapter applies to every entity of the Seminole Nation except for business enterprises established under Title 8 of the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2008-09, April 8, 2008; amended by TO 2013-11; renumbered by TO- 2015-06, July 25, 2015; renumbered from Section 902 to Section 1002 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 1003. References to Other Law**

- (a) The policies are based on the following as they apply:
  - (1) Seminole Nation of Oklahoma Code of Laws Title 14, Section 204(b)(2)
  - (2) 5 U.S.C. §§ 5701-5711, Travel and Subsistence Expenses; Mileage Allowances
  - (3) 41 CFR 300-304, Federal Travel Regulation

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 903 to Section 1003 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 1004. Definitions**

- (a) “Finance Committee” means the committee established pursuant to Title 14, Chapter Two, Seminole Nation Code of laws.
- (b) “Per Diem Allowance” means a daily payment instead of reimbursement for actual expenses for lodging, meals, and related incidental expenses.

(c) “Travel Expenses” means costs for transportation, lodging, subsistence, and related items incurred by individuals who are in travel status on official business of the Seminole Nation.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 904 to Section 1004 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1005. Travel Regulations**

(a) To implement the policies set forth in this Chapter, the Finance Committee, as authorized by Title 14, Section 204(b)(2) of the Seminole Nation Code of Laws, shall establish Seminole Nation travel policies and regulations consistent with the policies in this Chapter and with any applicable requirements of federal law and regulations.

(b) The Executive Department of the Seminole Nation shall be responsible for the design and maintenance of travel related forms, whether paper or electronic.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 905 to Section 1005 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1006. Travel Policy Overview**

Except where provided otherwise in this Chapter, or in the policies and regulations prescribed pursuant to section 605 of this Chapter, it is the policy of the Seminole Nation to comply with the requirements of the Federal Travel Regulation (TFR) and reimburse travel expenses based on the allowances stated therein.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 906 to Section 1006 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1007. Permission to Travel**

Any travel for official Tribal business must have prior approval by appropriate supervisory personnel.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 907 to Section 1007 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1008. Travel Contact Person**

The Seminole Nation Procurement Office will serve as the primary contact for all travel arrangements, including airfare, lodging, and conference/meeting registration.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 908 to Section 1008 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 1009. Travel Advances**

- (a) Upon the request of any traveler, an advance may be made for individual travel expenses related to authorized travel.
- (b) Travel advance requests shall be approved by appropriate supervisory personnel.
- (c) Travel advances shall be limited to per diem and mileage allowances, plus other anticipated travel expenses that are necessary and reimbursable.
- (d) Except as provided in subsection (e) below, travel advance requests shall be submitted in a timely manner that allows sufficient time for processing the request before the scheduled travel start date.
- (e) Advances for unanticipated travel are permitted under the following conditions:
  - (1) Funds are available to pay for the travel advance;
  - (2) The trip is necessary and justified; and
  - (3) The Principal Chief, Assistant Chief, or the designee specifically approves the travel advance request and directs immediate processing of the request.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 909 to Section 1009 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 1010. Recoupment of Travel Advances**

- (a) Travel advances are prepayments of estimated travel expenses, and any traveler receiving a travel advance shall account for the advance upon completion of the travel.
- (b) The traveler shall submit a travel expense report justifying the expenditure of the advance within five (5) business days from the date of the traveler's return.
- (c) A sum advanced and not used for allowable travel expenses shall be repaid to the Nation. The balance due the Nation may be recovered by deduction from any amount due the traveler, including payroll, and by any other method provided by law.
- (d) Failure to submit an expense report in accordance with section 1010(b) will result in the total cost of the trip (mileage, per diem, lodging, airfare, registration fee, etc.) being disapproved and such amounts advanced shall be deducted from the traveler's payroll or from any other amounts due to the traveler.

(e) If an individual receives a travel advance, but the related travel is not performed, the full amount of the advance must be repaid promptly.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 910 to Section 1010 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 1011. Allowances and Reimbursements Authorized**

(a) Per Diem

- (1) An individual traveling on official Tribal business and in travel status for more than twelve (12) hours will be paid a per diem allowance.
- (2) Per diem allowance shall not exceed the maximum rates and amounts established pursuant to 5 U.S.C. §§ 57001-5711.
- (3) Except as provided otherwise in this Chapter, per diem allowances shall be calculated using Federal Travel Regulation (FTR) methods.

(b) Meals and Incidental Subsistence Expenses

- (1) Meals and incidental subsistence expenses will not be reimbursed when no overnight lodging is required, but the traveler will be allowed to claim travel mileage.
- (2) Meals and incidental subsistence expenses are reimbursed when lodging is required. Allowances paid will be calculated using the FTR.
- (3) No receipts are required for meals and incidental expense allowances claimed.

(c) Travel by Privately Owned Vehicle

- (1) Reimbursement for travel by privately owned vehicle will be permitted when authorized and will be reimbursed at the current rate per the FTR.
- (2) Estimated mileage will be based on map mileage. Mileage will be paid on the shortest distance to and from the starting point.
- (3) Any traveler requesting reimbursement for travel by privately owned vehicle shall have a valid driver's license and must submit a copy of the license upon request.

(d) Lodging

- (1) Lodging will be reimbursed not to exceed the maximum lodging amounts allowed by the FTR unless lodging is at a designated location for the conference or meeting.
  - (2) Travelers are authorized to obtain single rooms, where two or more travelers are authorized to obtain single rooms. Where two or more travelers, by their choice, stay in one room, only one will be reimbursed lodging expense.
  - (3) Travelers will be reimbursed for public lodging such as motels or hotels.
  - (4) Reimbursement for lodging in personal residences is unallowable.
- (e) Airfare
- (1) Except as provided in paragraph (2) below, travel by air will be reimbursed at coach or economy rates only.
  - (2) Airfare costs in excess of coach or economy rates are allowable and reimbursable when coach or economy class travel would require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in additional costs that would offset the transportation savings, or offer accommodations not reasonably adequate for the traveler's medical needs.
  - (3) The traveler shall document the conditions that justify the use of other than coach or economy class airfare on a trip-by-trip basis. However when use of other than coach is necessary to accommodate a medical disability or other special need, the disability may be certified annually in a written statement by a competent medical authority. If the disability is a lifelong condition, then a one-time certification statement is required.
- (f) Rental Car
- (1) Reimbursement for rental car costs requires prior approval. Justification for use of a rental car must be provided with the travel request.
  - (2) Receipts are required to substantiate rental car cost and related expenses, e.g., fuel cost.
- (g) Taxi-cab fare and shuttle fare will be reimbursed with receipts.
- (h) Parking, bridge, road, and tunnel fees will be reimbursed with receipts.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 911 to Section 1011 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 1012. Applicability**

Documentation to substantiate expenses claimed on the travel expense report shall be submitted along with the expense report. The Finance Committee shall prescribe regulations that identify the type of documentation required to substantiate each type of travel expense.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 912 to Section 1012 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 1013. Additional Provisions of Travel Policy**

(a) If the traveler does not travel by the method of transportation required by regulation or selected by the Nation, any additional expenses incurred will be the responsibility of the traveler.

(b) Reimbursement for tips shall not exceed rates and/or amounts established by the Finance Committee.

(c) Travel shall be by the method most advantageous to the Nation, when cost and other factors are considered. If air travel has been determined to be the most advantageous method and if the traveler chooses to drive rather than fly, then the actual cost cannot exceed the most economical airfare ascertained by the travel contact person.

[HISTORY: Enacted by TO 2013-11; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 913 to Section 1013 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **CHAPTER ELEVEN**

### **HEAD START/EARLY HEAD START PROVISIONS**

#### **Section 1101. Definitions**

- (a) “Director” shall mean the Director of the Seminole Nation of Oklahoma Early Childhood Services Program, including Head Start and Early Head Start.
- (b) “Head Start” shall mean the Seminole Nation of Oklahoma Early Childhood Services Program, including Head Start and Early Head Start.
- (c) “Human Resources” shall mean the Seminole Nation Human Resources Department.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1001 to Section 1101 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1102. General Provisions**

- (a) Except as provided in this Chapter or in its Policies and Procedures Manual approved by the General Council, the Head Start Program shall abide by this Title 11 and the Nation’s Labor Laws as approved by the General Council or designated subordinate body as such policies may be amended from time to time.
- (b) In an effort to promote shared governance, the Seminole Nation Head Start/Early Head Start Policies and Procedures shall be developed in consultation with and approval of both the Seminole Nation Head Start Policy Council and the Seminole Nation Personnel Board.
- (c) Head Start employees shall be bound by the Policies and Procedures Manual as approved by the Seminole Nation General Council.
- (d) As with other Seminole Nation departments, Head Start employees are subject to a six-month probationary period.
- (e) To the extent any provision of this Title or Chapter or applicable policies conflict with applicable federal law, such federal law shall control.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1002 to Section 1102 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2019-01 until a Personnel Board is nominated and constitutes a quorum, January 26, 2019.]

#### **Section 1103. Employment Preference**

As required by 45 CFR § 1304.52(b)(3), Head Start shall afford a hiring preference to all qualified current and former head start parents. If no current or former head start parent applies for an

available position, or if no current or former head start parent meets or exceeds the minimum qualifications for the position, then Head Start shall abide by the Nation's existing hiring preferences.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 100 to Section 1103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1104. Recruitment and Selection**

(a) Notices of vacancies shall be published by Human Resources in accordance with the Seminole Nation's policies.

(b) Copies of vacancy notices shall also be provided by Human Resources to be posted at all Head Start/Early Head Start Centers by the respective Center Supervisor.

(c) The Director shall provide each Policy Council Representative with a copy of vacancy notices to implement the process of recruiting Head Start/Early Head Start parents and guardians to apply for jobs for which they are qualified.

(d) Applications shall be submitted to Human Resources and must be accompanied by the applicant's driver's license, credentials/certifications, and resume (if applicable). Applicants who are claiming "Indian Preference" must also include copies of CDIB/Tribal Enrollment Cards.

(e) Human Resources shall submit those qualified applicants to the Seminole Nation Head Start Director for ranking and screening according to applicable Head Start job descriptions.

(f) Applications for a Head Start Director shall be submitted to the Principal Chief.

(g) The Director may interview only those candidates who meet the minimum qualifications for the advertised position. Participants in the interview process shall include the Head Start Program Director and such other individuals as may be reasonably necessary, including but not limited to, Human Resources Representative, Content Area Manager, Center Supervisor (if applicable), or a Policy Council Representative.

(h) Each interviewee will be provided a job description for the position he or she has applied prior to beginning the interview.

(i) The Director, in consultation with the interview panel, will select the best applicant for employment. The successful applicant shall be notified and required to submit such additional documentation as necessary to complete the employee's file. The Director shall notify Human Resources of the successful candidate within one (1) working day after interviews are conducted.

(j) Unsuccessful applicants shall be notified in writing by Human Resources within five (5) working days after interviews have been completed. Copies of application materials shall be returned to Human Resources for consideration of future vacancies.

(k) The successful candidate shall not be permitted to begin new employee orientation until his or her employment file is complete, and the applicant has successfully passed a background check, health screening and a drug test. Specifically, the successful applicant must complete the following:

- (1) Drug Test;
- (2) Initial health examination that includes screening for tuberculosis, x-ray if testing positive for TB, and physical examination. A program-approved Health Record Form will be used. A health examination must be completed annually;
- (3) OSBI and DHS Background Check submitted by the Head Start/Early Head Start Program;
- (4) FBI Background Check submitted by the Seminole Nation Human Resource Department; and
- (5) Child Care Staffing Forms.

(l) The successful Candidate shall be required to provide a signed Declaration of Background Information stating that he or she has not been charged with or entered a plea of guilty or nolo contendere (no contest), or been convicted of the following:

- (1) Any criminal activity involving violence against a person;
- (2) Child abuse or neglect;
- (3) Possession, sale or distribution of illegal drugs;
- (4) Sexual misconduct; or
- (5) An act of gross irresponsibility or disregard for the safety of others or a pattern of criminal activity.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1004 to Section 1104 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1105. Temporary Hires**

(a) The regular work force may be supplemented as needed with temporary employees or other forms of flexible staffing as otherwise provided by the Seminole Nation of Oklahoma Personnel Policy Manual or other applicable policy.

(b) The hiring of temporary employees must be in accordance with Seminole Nation Policies and Procedures, but the hiring process shall not require advertisement in local media.

(c) Although temporary employees may be hired on an expedited basis, all temporary hires must successfully pass all background, health and drug screening required of other job candidates.

(d) If a position filled by a temporary employee is one requiring a permanent employee, the Director shall commence the recruitment and advertising process for the position within thirty business days and shall provide the temporary employee the opportunity to apply and interview with other candidates.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1005 to Section 1105 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1106. Termination Procedures**

The following shall apply to Head Start employees:

(a) The Head Start Policy Council must approve or disapprove any recommendation by the Director for the termination of a Head Start employee, unless the termination is due to job abandonment.

(b) Head Start/Early Head Start employees may be subject to discipline or immediate termination for the following non-exclusive violations, not limited to:

- (1) Any breach of confidentiality.
- (2) Violation of the dress code.
- (3) Violation of Seminole Nation drug and alcohol policies, including a positive drug test. An employee that tests positive for alcohol or drugs for a second time shall be terminated immediately.
- (4) Failure to fully complete any required drug or alcohol counseling or treatment.
- (5) Violation of the Seminole Nation Head Start/ Early Head Start Policies and Procedure Manual.
- (6) Violation of federal Head Start/ Early Head Start regulations.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1006 to Section 1106 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 1107. Appeals**

Federal regulations require an internal dispute resolution process for Head Start Programs. This internal dispute resolution process shall not include terminations. Seminole Nation Head Start

and Early Head Start employees do not have appeal rights to the Seminole Nation Personnel Board or the Seminole Nation District Court.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered and amended by TO 2015-06, July 25, 2015; renumbered from Section 1007 to Section 1107 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 1108. Investigation of Child Abuse or Mistreatment**

(a) If any employee is suspected of engaging in the physical punishment, mistreatment, neglect or abuse of a child, the following, non-exclusive procedures shall apply:

- (1) The Director shall conduct an immediate investigation upon receipt of any information indicating the possible mistreatment, neglect or abuse of a child.
- (2) The Director shall report allegations/incidents to the Oklahoma Department of Human Services and/or Bureau of Indian Affairs-Child Welfare Office and the Seminole Nation Lighthouse for further investigation.
- (3) The employee may be suspended during the course of the investigation.
- (4) If the investigation confirms the allegations, the employee shall be immediately terminated without possibility of rehire.

(b) The same procedures shall also apply to any employee who is suspected of failing to report the physical punishment, mistreatment, neglect or abuse of a child.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1008 to Section 1108 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 1109. Drug Testing**

The Seminole Nation Head Start/Early Head Start Program may enact policies requiring more stringent drug testing than otherwise utilized by the Nation, either on its own initiative or as required by federal law.

[HISTORY: Enacted by TO 2012-12, October 27, 2012; renumbered by TO 2015-06, July 25, 2015; renumbered from Section 1009 to Section 1109 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 11A  
SEMINOLE NATION EMPLOYMENT RIGHTS ACT  
INDEX**

<b>TITLE 11a SEMINOLE NATION EMPLOYMENT RIGHTS ACT INDEX .....</b>	<b>i</b>
<b>TITLE 11A SEMINOLE NATION EMPLOYMENT RIGHTS ACT.....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Findings and Purpose .....	1
Section 103. Definitions .....	2
Section 104. Establishment of Employment Rights Office .....	4
Section 105. Director; Authority.....	4
Section 106. Seminole Nation Employment Rights Commission.....	5
Section 107. Regulations; Promulgation. ....	6
Section 108. Indian Preference in Employment.....	7
Section 109. Indian Preference in Contracting.....	7
Section 110. Indian Preference; Hiring Regulations .....	8
Section 111. Training .....	8
Section 112. Hiring Hall .....	8
Section 113. Job Qualifications.....	8
Section 114. Religious Freedom .....	8
Section 115. Compliance of Act by Unions.....	9
Section 116. Employment Rights Fee .....	9
Section 117. Reporting and On-Site Inspections .....	10
Section 118. Complaints.....	10
Section 119. Investigations .....	11
Section 120. Investigatory Powers of Director and Commission .....	11
Section 121. Enforcement.....	12
Section 122. Appeals .....	14
Section 123. Confiscation and Sale .....	15
Section 124. Orders to Police.....	16
Section 125. Publication of Law .....	16
Section 126. Compliance Plan .....	16
Section 127. Applicability .....	17
Section 128. Severability .....	17
Section 129. Effective Date .....	17

**TITLE 11A**  
**SEMINOLE NATION EMPLOYMENT RIGHTS ACT**

**Section 101. Title**

This law shall be entitled the "Seminole Nation Employment Rights Act."

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by  
TO 2015-07, July 25, 2015.]

**Section 102. Findings and Purpose**

(a) Findings. The General Council of the Seminole Nation hereby makes the following findings regarding the need for and purpose of the Seminole Nation Employment Rights Act:

- (1) Jobs, subcontracts and contracts in the private sector within the territorial jurisdiction of the Seminole Nation are important resources for Indian people and Indians must use their rights to obtain their share of such opportunities as they become available;
- (2) Indians have unique and special employment, subcontract and contract rights, including Congressional recognition of the power of Indian tribes to impose preferential requirements on the grounds that the exemption is consistent with the federal government's policy of encouraging Indian employment and with the special legal position of Indians;
- (3) Indians are entitled to the protection of federal laws concerning prevention of employment discrimination, and the Seminole Nation can and should play a role in the enforcement of such laws;
- (4) The Seminole Nation has the inherent sovereign power to pass laws to implement and enforce special employment rights on behalf of Indians; and
- (5) The General Council of the Seminole Nation recognizes that it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

(b) Purpose

- (1) The purpose of the Seminole Nation Employment Rights Act is to assist in and require the fair employment of Indians, to create employment and training opportunities for members of the Seminole Nation and other Indians, and to prevent discrimination against Indians in the employment practices of employers who are doing business within the territorial

jurisdiction of the Seminole Nation of Oklahoma as defined by § 103(u) herein.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 103. Definitions**

Terms contained in the Seminole Nation Employment Rights Act shall be defined as follows:

(a) "Commerce" shall include all trade, traffic, distribution, communication, transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining and energy production.

(b) "Commission" shall mean the Seminole Nation Employment Rights Commission.

(c) "Contractor" shall mean any person, company or other entity engaged in work with the Seminole Nation, its entities, agencies, or wholly-owned corporations, limited liability companies, partnerships, and businesses.

(d) "Director" means the Director of the Seminole Nation Employment Rights Office.

(e) "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.

(f) "Employee" shall mean any employee, any applicant for employment, and any former employee whose employment has ceased as a consequence of or in connection with a current labor dispute or because of an unfair labor practice. The term "employee" shall not include any individual employed in the domestic services of any family or person at his home, or any individual employed by any other person who is not an employer as herein defined.

(g) "Employer" shall mean any person, company, contractor, subcontractor or other entity located in or on the Seminole Nation's territorial jurisdiction or engaged in work with the Seminole Nation, its entities, agencies, or wholly-owned corporations, limited liability companies, partnerships, and businesses employing two or more persons. For the purposes of this Act, the term "employer" includes the Seminole Nation, its entities, agencies, or wholly-owned corporations, limited liability companies, partnerships, and businesses, federal, state and county government agencies and includes contractors, and subcontractors of all other agencies.

(h) "Employment Rights Office" shall mean the Seminole Nation Employment Rights Office.

(i) "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure applicability of this Title to all employment and contract activities within the Nation's territorial jurisdiction, and the term shall be so interpreted by the Commission and the Courts.



(j) "Government Commercial Enterprise" means any activity by the Seminole Nation or of the state government that is not a traditional government function as defined by the Internal Revenue Service.

(k) "Immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, son, daughter, mother or father by adoption.

(l) "Indian" means any member of a federally recognized Indian tribe.

(m) "Indian owned firm or entity" means any commercial, industrial or other business which is owned by an Indian or Indians, or other Indian owned firm or entity, provided that such Indian ownership constitutes not less than fifty-one percent (51%) of the enterprise.

(n) "Indian resident on land within the territorial jurisdiction of the Seminole Nation" or "resident Indian" shall mean any Indian person who has resided on lands within the territorial jurisdiction of the Seminole Nation for not less than sixty (60) days preceding the initial date any contract for work on land within the territorial jurisdiction of the Nation is let or the initial date any employment offers are made by an employer permanently located on lands within the territorial jurisdiction of the Seminole Nation.

(o) "Local Indian" means any member of a federally-recognized tribe who resides within the territorial jurisdiction of the Seminole Nation.

(p) "Nation" means the Seminole Nation of Oklahoma.

(q) "Nation's District Court" means the District Court as defined in Title 5, §2(f) of the Code of Laws of the Seminole Nation.

(r) "Nation's Police" means the Police as defined in Title 24, § 101 of the Code of Laws of the Seminole Nation.

(s) "Non-resident Indian" means any Indian who is not a resident Indian as defined by § 103(n) herein.

(t) "SNERO" means the Seminole Nation Employment Rights Office.

(u) "Territorial jurisdiction." The territorial jurisdiction of the Seminole Nation of Oklahoma shall be within the geographical boundaries established by the Treaty of March 21, 1866, 14 Stat. 755, entered into by the Seminole Nation of Oklahoma and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries, owned in fee by the Seminole Nation of Oklahoma or held in trust by the United States on behalf of the Seminole Nation of Oklahoma. All of said property subject to the territorial jurisdiction of the

Seminole Nation of Oklahoma, both real and personal, shall be exempt from federal and state taxation, when not inconsistent with federal law.

(v) "Union" or "labor union" means any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

[HISTORY: Enacted by TO 93-05, January 23, 1993; amended by TO 12-20, October 27, 2012; recodified in Title 11A by TO 2015-07, July 25, 2015; corrected on June 29, 2017 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 104. Establishment of Employment Rights Office**

The Seminole Nation Employment Rights Office (SNERO) is hereby established, and full supervisory authority over implementation of the Seminole Nation Employment Right Act shall vest in said office. The Employment Rights Office shall be administered by a Director in conjunction with administration of the JTPA Office of the Nation, and shall report directly to the Executive Office of the Nation.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 105. Director: Authority**

The Director of the Employment Rights Office shall have the authority to:

- (a) Hire staff;
- (b) Expend funds appropriated by the General Council;
- (c) Obtain and expend funding from federal, state or other sources to carry out the purpose of the office subject to approval of the General Council;
- (d) Administer the policies, powers and duties prescribed in the Seminole Nation Employment Right Act;
- (e) Require employers to submit reports;
- (f) Establish programs subject to the General Council's approval, in conjunction with federal and tribal offices, to provide counseling and support to Indian workers in order to assist them in retaining employment. Employers shall be required to participate in and to cooperate with such support and counseling programs.
- (g) Enforce the provisions of the Seminole Nation Employment Rights Act and enforce regulations adopted pursuant to § 107 herein by issuance of cease and desist orders, imposition of fines and posting notices, provided such actions are not inconsistent with 25 USC § 1301, et. seq.; and

(h) Take other actions as are necessary for the fair and vigorous implementation of the Seminole Nation Employment Rights Act.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

**Section 106. Seminole Nation Employment Rights Commission**

(a) Establishment of Seminole Nation Employment Rights Commission. The Seminole Nation Employment Rights Commission is hereby established.

(b) Members. The Commission shall consist of a three (3) member administrative review board who shall be appointed by the Principal Chief subject to confirmation by the General Council. When the first Commissioners are appointed, one shall be appointed to serve a term ending on December 31, 1993; one shall be appointed to serve a term ending on December 31, 1994, and one shall be appointed to serve a term ending on December 31, 1995. Thereafter, each term shall be for a period of three years, commencing on January 1 of the year following the December 31 expiration date of said term. The Principal Chief shall have the authority to remove a Commissioner for cause prior to expiration of the Commissioner's term.

(c) Qualifications. Any person who is eligible to serve as a Commissioner of the Seminole Nation Employment Rights Office.

(d) Duties. The Commission shall have the following powers and duties:

- (1) Develop and promulgate all regulations authorized to be implemented pursuant to the provisions of § 107 herein;
- (2) Provide oversight of the Seminole Nation Employment Rights Office;
- (3) Hold hearings for the purpose of the subpoena witnesses and documents and the taking of evidence;
- (4) Review and issue rulings and orders pertaining to appeals of decisions of the Seminole Nation Employment Rights Office by aggrieved parties;
- (5) Enter into agreements with unions to ensure union compliance with this Act.
- (6) Petition the Nation's District Court for orders as necessary and appropriate to enforce the decisions of the Commission or Director and any sanctions imposed by them.

(e) Quorum. A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(f) Recusal of Commission Members

- (1) No member of the Commission shall participate in any action or decision by the Commission directly involving himself, or a member of his immediate family, or any person, business or other entity of which he or a member immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.
- (2) Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which generally affects a class of persons, regardless of whether the Commissioner or a member of his immediate family is a member of the affected class or affects the Nation, a tribal enterprise, or a person or entity in a contractual relationship with the Nation or a tribal enterprise, regardless of whether the Commissioner is a member of the Nation.
- (3) A Commissioner may voluntarily recuse himself and decline to participate in any action or decision by the Commission when the Commissioner, in his discretion, believes that he cannot act fairly or without bias or that there would be an appearance that he could not act fairly or without bias.

(g) Mileage and Per Diem. Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for members of other commissions of the Nation.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 107. Regulations; Promulgation**

(a) The Commission, assisted by the Employment Office, shall promulgate any rules and regulations necessary for implementation of the Seminole Nation Employment Rights Act, and consistent with the provisions of said Act and other applicable laws of the Nation, provided that said rules and regulations are approved by the Seminole Nation Employment Rights Commission. The Commission shall insure that all rules, regulations, and guidelines that are issued provide notice to the public and further that all rules, regulations and guidelines accord affected parties' rights to due process of law.

(b) Except in cases where the Commission has determined that an emergency situation exists, the Commission shall follow the following minimal procedures in issuing all rules, regulations and guidelines:

- (1) Notice of Proposed Regulations. All proposed rules, regulations, and guidelines shall be sent to the General Council, shall be posted in at least two public places within the territorial jurisdiction of the Seminole Nation, and shall be maintained in the Seminole Nation Employment Rights Office and made available for public inspection for not less than twenty (20) days from the date notice was mailed to the General Council.

- (2) Comment Period. The Seminole Nation Employment Rights Office shall accept comment from any interested parties during the twenty (20) day notice period required in § 107(b)(1) herein.
- (3) Finalization. The Seminole Nation Employment Rights Commission shall prepare and approve final rules, regulations and guidelines following the comment period, after reviewing any comments made. The preamble to such final rules, regulations and guidelines shall state the major issues raised by the comments, if any.
- (4) Effective Date of Regulations. Following Commission approval of the final rules, regulations and guidelines, said rules, regulations and guidelines shall be posted in a public place within the territorial jurisdiction of the Seminole Nation, and shall be placed in a file in the Seminole Nation Employment Rights Office, which shall be open to public inspection.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 108. Indian Preference in Employment**

All covered employers, for all employment occurring within the territorial jurisdiction of the Seminole Nation, are hereby required to give "Indian preference" to qualified employees, with the first preference to local Indians, in all hiring, promotion, training, pay, benefits, and other terms and conditions of employment. Employers shall comply with all rules, regulations and guidelines applicable to Indian preference and approved by the Seminole Nation Employment Rights Commission. The Indian preference requirements contained herein shall not apply to any direct employment by the Nation or by the federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 109. Indian Preference in Contracting**

All entities awarding contracts or subcontracts for supplies, services, labor and materials in an amount of \$5,000 or more where the majority of the work on the contract or subcontract will occur within the territorial jurisdiction of the Nation, shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as fifty-one percent (51%) or more Indian-owned and controlled, with a first preference to qualified entities that are fifty-one percent (51%) or more owned and controlled by local Indians. The requirements of § 109 herein shall apply to all subcontractors awarded by a tribal, federal or state direct contractor or grantee whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligation of such entities in regard to Indian preference in contracting and

subcontracting. The Commission shall establish a system for certifying firms as Indian preference and local Indian preference eligible.

[HISTORY: Enacted by TO 93-05, January 23, 1993; amended by TO 12-20, October 27, 2012; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 110. Indian Preference: Hiring Regulations**

The Commission shall promulgate regulations which impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level or which establishes percentage hiring goals by craft or skill level for specified employment fields.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 111. Training**

Employers subject to the provisions of the Seminole Nation Employment Rights Act herein shall establish or participate in such training programs as the Commission deems necessary to increase the pool of Indians eligible for employment within or outside the territorial jurisdiction of the Seminole Nation.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 112. Hiring Hall**

The Seminole Nation Employment Rights Office is authorized to establish in conjunction with the Nation's tribal employment and training program a hiring hall in or skills bank, and impose a requirement that no covered employer may hire a non-Indian until the Nation's hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 113. Job Qualifications**

No employer subject to the provisions of the Seminole Nation Employment Rights Act shall use job qualification criteria or other personnel requirements that serve as barriers to Indian employment as a reason for non-compliance with Indian preference, unless the employer can demonstrate that such criteria or requirements are required by business necessity.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 114. Religious Freedom**

Employers shall make a reasonable accommodation for the religious beliefs of Indian workers in accordance with guidelines to be developed by the Seminole Nation Employment Rights Office and approved by the Commission.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 115. Compliance of Act by Unions**

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with Title 11A of the Code of Laws of the Seminole Nation and with the rules, regulations and orders of the Commission. Until such agreement is filed with the Seminole Nation Employment Rights Office and the Commission, the employer may not commence work within the territorial jurisdiction of the Seminole Nation of Oklahoma. The Commission will provide a model union agreement for use by all unions who have a collective bargaining agreement with any employer. Every union agreement with an employer or filed with the Commission must provide:

(a) Indian Preference. The union will give preference to Indians in job referrals regardless of which union referral list they are on.

(b) Cooperation with the Commission. The union will cooperate with the Commission in all respects and assist in the compliance with, and enforcement of, the Seminole Nation Employment Rights Act and related regulations and agreements.

(c) Registration. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.

(d) Training Programs. The union will establish a journeyman upgrade and advanced apprenticeship program.

(e) Temporary Work Permits. The union will grant temporary work permits to Indians who do not wish to join the union.

(f) Recognition of Unions. Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities within the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 116. Employment Rights Fee**

An Employment Rights Fee is necessary to raise revenue for the operation of the Seminole Nation Employment Rights Office, and is hereby authorized to be imposed by the Employment Rights Office as follows:

(a) Every covered employer or entity with a construction contract in the sum of \$75,000 or more shall pay a fee of 2% of the total amount of the contract; however, Seminole Nation Housing Rehabilitation contracts, Housing Improvement Program contracts and Seminole Nation Maintenance contracts shall be exempt from this fee. Such fee shall be paid by the employer or entity prior to commencing work in the Nation's territorial jurisdiction. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments.

(b) Every covered employer or entity, other than construction contractors, with five (5) or more employees working within the Nation's territorial jurisdiction with gross sales of \$1,000 or more shall pay a quarterly fee of 2% of his employees' quarterly payroll which shall be paid within 30 days after the end of each quarter.

(c) The fees shall be collected by the Seminole Nation Employment Rights Commission. The Commission shall provide for an efficient and orderly fee collection process.

[HISTORY: Enacted by TO 93-05, January 23, 1993; amended by TO 2004-13, March 6, 2004; amended by TO 2012-20, October 27, 2012; amended by TO 2013-10; June 2, 2013; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 117. Reporting and On-Site Inspections**

(a) Employers shall submit reports, and other information requested by the Commission.

(b) The Commission and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with the Employment Rights Act and rules, regulations and orders of the Commission.

(c) The Commission shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor and shall have a right to speak to workers and conduct investigations on job sites.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 118. Complaints**

(a) Parties Entitled to File Complaint. The following shall have a right to file a complaint:

- (1) Director. If the Director has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with the Seminole Nation Employment Rights Act or any rules, regulations or orders of the Commission, the Director may file a complaint and notify such party of the alleged violations.



- (2) Individual Indian. If any Indian believes that an employer has failed to comply with the Seminole Nation Employment Rights Act or rules, regulations or orders of the Commission, or believes he has been discriminated against by an employer because he is an Indian, he may file a complaint with the Director specifying the alleged violation. If any employer fires, lays off, or penalizes in any manner, any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in § 121 herein.
- (3) Employer or Union Complaint Procedure. If an employer or union believes that any provision of the Seminole Nation Employment Rights Act or any rules, regulation or order of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error.

(b) Contents of Complaint. The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 119. Investigations**

(a) Investigation Deadline. The Director shall within thirty (30) days of the date on which a complaint is filed complete an investigation of every complaint unless the Director requests and is granted an extension by the Commission, which shall be for no more than thirty (3) days.

(b) Investigatory Authority of Director. The Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations, and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of this Title and any rule or order hereunder. When requesting any reports or other information from a covered employer, the Director shall request that the covered employer identify all material which contains trade secrets or privileged or confidential commercial, financial, or employment information. Any material so identified shall be kept confidential by the Director unless, on the request of the Director or other interested party, the Commission determines that the material does not contain confidential information, the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy. If upon investigation, the Director has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of § 121 herein.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 120. Investigatory Powers of Director and Commission**

(a) Power to Require Testimony and Production of Records. For the purpose of investigations or hearings which, in the opinion of the Director or the Commission are necessary and proper for the enforcement of this Act, a Commissioner, the Director, or any field compliance officer designated by the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

(b) Confidentiality of Records. Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed pursuant to this section or used in a compliance hearing or subsequent appeal to the Nation's District Court, shall be confidential records of the Commission or the said Court, shall not be opened to public inspection, and shall be used only by the Director, the Commission, parties to a compliance hearing or subsequent appeal to the Nation's District Court, and the District Court.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

## **Section 121. Enforcement**

(a) Notification of Violation. When, after conducting an investigation, initiated by a complaint pursuant to § 118 herein, the Director has reason to believe a violation of this Act or regulations issued pursuant to it has occurred, the Director shall notify the covered employer or entity in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.

(b) Formal Notice of Non-compliance. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time to comply, which in no event shall be less than five days from the date of receipt of such notice, unless the Director has reason to believe that irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five days.

(c) Request for Hearing. If the party fails or refuses to comply, the party may request a hearing before the Commission which shall be held no sooner than five days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to § 121(f).

(d) Bond during Pendency of Proceedings. If the party requests a hearing pursuant to § 121(c) herein, and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, he may, in his discretion, require the party to post a bond with the Commission in

an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may proceed pursuant to § 121(f). The Director may also petition the Nation's District Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

(e) Conduct of Hearings. Any hearing held pursuant to section 121 herein shall be conducted by the Commission. Hearings shall be governed by the following rules or procedure:

- (1) All parties may present testimony of witnesses and other evidence and be represented by counsel at their expense.
- (2) The Commission may have the advice and assistance at the hearing of counsel provided by the Nation.
- (3) The Chairman of the Commission or the Vice-Chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (4) The Commission may consider any evidence that it deems relevant to the hearing and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission.
- (5) The Commission shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.
- (6) The hearing may be adjourned, postponed and continued at the discretion of the Commission.
- (7) At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.
- (8) In any hearing before the Commission where the issue is compliance by an employer with any of the requirements and provisions of the Seminole Nation Employment Rights Act, the burden of proof shall be on the employer, rather than on the employee or other complainant, to show said compliance.
- (9) The Seminole Nation Employment Rights Office shall notify all parties thirty (30) days after the last hearing of its decision in the matter.
- (10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the party charged.

(f) Remedies upon Commission Determination of Violation. If, after the hearing, the Commission determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

- (1) Deny such party the right to commence business within the territorial jurisdiction of the Seminole Nation;
- (2) Suspend such party's operations within the territorial jurisdiction of the Seminole Nation;
- (3) Terminate such party's operation within the territorial jurisdiction of the Seminole Nation;
- (4) Deny the right of such party to conduct any further business within the territorial jurisdiction of the Seminole Nation;
- (5) Impose a civil fine on such party in an amount not to exceed \$500 for each violation, provided that each day during which a violation exists shall constitute a separate violation;
- (6) Order such party to make payment of back pay to any aggrieved Indian;
- (7) Order such party to dismiss any employees hired in violation of the Nation's employment rights requirements;
- (8) Require employment promotion and training of Indians injured by the violation;
- (9) Order the party to take such other action as is necessary to ensure compliance with this Act or to remedy any harm caused by a violation of the Act, consistent with the requirements of the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq.

(g) Commission Decision; Protection. The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing provided in § 121(e). Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may move the Nation's District Court for, and the District Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this Act, pending the party's appeal or expiration of the time for appeal.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

## **Section 122. Appeals**

(a) Manner of Taking Appeal. An appeal to the Nation's District Court may be taken from any final order of the Commission by any party adversely affected thereby. Said appeal

must be filed with the Court no later than twenty (20) days after the party receives a copy of the Commission's decision. The appeal shall be taken by serving written notice of appeal with the Nation's District Court, with a copy to the Director, within twenty (20) days after the date of the entry of the order. The notice of appeal shall set forth the order from which appeal is taken; specify the grounds upon which reversal or modification of the order is sought; and be signed by the appellant.

(b) Stay of Commission Order Pending Appeal; Bond. The order of the Commission shall be stayed pending the determination of the Nation's District Court, provided that such stay may be conditioned upon the posting of a bond if the Director petitions for a bond and the Court, for good cause shown, orders the appealing party to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the court.

(c) Standard of Review. The Nation's District Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

(d) Reversal on Appeal. If the order of the Commission is reversed or modified, the court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) Enforcement of Commission Order. If the Commission's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the Commission's order, the Commission shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

### **Section 123. Confiscation and Sale**

(a) If, twenty-one (21) days after a decision by the Commission pursuant to § 121(g), no appeal has been filed, or thirty (30) days after a decision by the Court on an appeal from a decision by the Commission pursuant to § 122 a party has failed to pay monetary damages imposed on it or otherwise comply with an order of the Commission or the court, the Commission may petition the Court to order the Nation's Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Nation's District Court, the value of which approximates the amount of monetary damages at issue.

(b) If the court finds the petition to be valid, it shall order the Nation's Police to confiscate and hold said property or as much as is available. The Nation's Police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to

redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation the party has not come into compliance, the court shall order the Nation's Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all costs incurred by the court and Nation's Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 124. Orders to Police**

The Nation's Police are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission and the Director. Such orders do not require a judicial decree or order to render them enforceable. The Nation's Police shall not be civilly liable for enforcing such orders so long as the order is signed by the Director and the Commission. The Nation's Police shall not enforce a removal order of the Director unless it is accompanied by a judicial decree by the Nation's District Court.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 125. Publication of Law**

(a) The Commission shall notify all covered employers of the Seminole Nation Employment Rights Act and their obligation to comply. All bid announcements issued by any tribal, federal, state or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with the Seminole Nation Employment Rights Act and all rules, regulations and orders of the Commission.

(b) All tribal agencies responsible for issuing business permits for activities within the territorial jurisdiction of the Seminole Nation or otherwise engaged in activities involving contact with prospective employers within the Seminole Nation shall be responsible for advising such prospective employers of their obligations under the Seminole Nation Employment Rights Act and the rules, regulations and orders of the Commission.

(c) The Seminole Nation Employment Rights Office shall send a copy of the Seminole Nation Employment Rights Act to every employer doing business within the territorial jurisdiction of the Seminole Nation.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by TO 2015-07, July 25, 2015.]

#### **Section 126. Compliance Plan**

As of the effective date of the Seminole Nation Employment Rights Act, no new employer may do business with the Seminole Nation until it has consulted with the Seminole Nation Employment Rights Office for meeting its obligations under this law.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by  
TO 2015-07, July 25, 2015.]

**Section 127. Applicability**

The Seminole Nation Employment Rights Act shall be binding on all covered employers whether or not they have previously operated on the lands within the territorial jurisdiction of the Seminole Nation and whether or not they are doing so at the time of the implementation of the Seminole Nation Employment Rights Act.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by  
TO 2015-07, July 25, 2015.]

**Section 128. Severability**

If any portion of the Seminole Nation Employment Rights Act shall be ruled invalid by a court of competent jurisdiction, that portion shall cease to be operative, but the remainder of the Act shall continue in full force and effect.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by  
TO 2015-07, July 25, 2015.]

**Section 129. Effective Date**

The Seminole Nation Tribal Employment Rights Act shall become effective from the date of its approval by the General Council of the Seminole Nation.

[HISTORY: Enacted by TO 93-05, January 23, 1993; recodified in Title 11A by  
TO 2015-07, July 25, 2015.]

**TITLE 12  
ENVIRONMENTAL HEALTH AND SAFETY  
INDEX**

<b>TITLE 12 ENVIRONMENTAL HEALTH AND SAFETY INDEX.....</b>	<b>i</b>
<b>TITLE 12 ENVIRONMENTAL HEALTH AND SAFETY .....</b>	<b>1</b>
<b>CHAPTER ONE INDUSTRIAL WASTE.....</b>	<b>1</b>
Section 101. Compliance by Industrial Park Users.....	1
Section 102. Major Contributing Industry Defined.....	1
Section 103. Pretreatment Standards .....	1
Section 104. Additional Pollutants .....	2
Section 105. Hazardous Pollutants or Wastes.....	2
Section 106. Prohibited Wastes and Pollutants.....	2
Section 107. Restrictive Covenants.....	3
Section 108. Amendment of Laws, Rules and Regulations.....	3
Section 109. Sewer Flow Sources .....	3
Section 110. Tribal Inspections.....	3
Section 111. Federal, State and Local Inspections .....	4



## **TITLE 12 ENVIRONMENTAL HEALTH AND SAFETY**

### **CHAPTER ONE INDUSTRIAL WASTE**

#### **Section 101. Compliance by Industrial Park Users**

All lessees and other industrial users of any Industrial Park established or to be hereafter established on property owned by, or under the authority of the Seminole Nation of Oklahoma, including, but not limited to, treatment water works for waste disposal contained therein, shall comply with and follow all Federal, State and local laws, including the laws and ordinances of the Seminole Nation.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12,  
November 16, 1991.]

#### **Section 102. Major Contributing Industry Defined**

A lessee or other industrial user of treatment works owned or operated by the Seminole Nation shall be designated as a major contributing industry who:

- (a) Has a flow of 22,000 gallons or more per average work day;
- (b) Has a flow greater than five percent of the flow carried by the treatment system receiving the waste;
- (c) Has in its waste a toxic pollutant in toxic amounts as defined under the regulation promulgated pursuant to Public Law 92-500, 86 Stat. 856, 33 U.S.C. § 1317(A); or
- (d) Is found by the permit issuance authority to have a significant impact, either singularly or in combination with other contributing industries, on the treatment works or upon the quality of effluent from the treatment works.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12,  
November 16, 1991.]

#### **Section 103. Pretreatment Standards**

All major contributing industry users introducing incompatible pollutants into any Industrial Park treatment works shall comply with, follow and adhere to those pretreatment standards established by a promulgated effluent limitations guideline defining best practicable control technology currently available pursuant to sections 301(b) and 304(b) of the Water Pollution Prevention and Control Act Pub. L. 92-500.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12,  
November 16, 1991.]

#### **Section 104. Additional Pollutants**

Compatible pollutant means biochemical oxygen demand, suspended solids, pH and focal coliform bacteria, plus additional pollutants identified in the NPDES permit and Industrial Park treatment works permit issued by the Seminole Nation of Oklahoma, and in addition, any pollutant that the treatment works was designed to treat and which in fact does remove such pollutants to a substantial degree. For example, such additional pollutants may include:

Chemical oxygen demand

Total organic carbon

Phosphorus and phosphorus compounds

Nitrogen and nitrogen compounds

Fats, oils and greases of animal or vegetable origin except those prohibited below

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

#### **Section 105. Hazardous Pollutants or Wastes**

Any industrial or non-industrial user of any Industrial Park treatment works shall not introduce into the treatment works any pollutants or wastes which shall interfere with the operation or performance of the works. Any pollutants or toxic materials which constitute an immediate hazard to humans, animals and aquatic life and in addition have accumulative effects shall not be introduced into the treatment works.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

#### **Section 106. Prohibited Wastes and Pollutants**

Specifically, the following pollutants, toxic materials, heavy metals and wastes shall not be introduced into Industrial Park treatment works:

- (a) Pollutants and wastes which create a fire or explosion hazard in the works;
- (b) Pollutants or wastes which will cause corrosive structural damage to the treatment works, however, in no case, pollutants or wastes with a pH lower than 5.0, unless the works can accommodate such pollutants and wastes as determined and certified by the designing engineers or other duly qualified official person or agency authorized by the Seminole Nation of Oklahoma;
- (c) Solid or viscous wastes or pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the treatment works;

(d) Wastes at a flow rate and/or pollutant discharge rate which is excessive over relatively short time periods such that there is a treatment process upset and subsequent loss of treatment efficiency; and

(e) Antimony, Arsenic, Barium, Beryllium, Bismuth, Boron, Cadmium, Chromium, Chromium (Tri), Cobalt, Copper, Iron, Lead, Manganese, Mercury, Molybdenum, Nickel, Rhenium, Selenium, Silver, Strontium Tellurium Tin, Uranyl ion and Zinc.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

#### **Section 107. Restrictive Covenants**

The rules, regulations, resolutions and ordinances hereby enacted shall operate as restrictive covenants of the leasehold and all lessees and users of the treatment works shall agree to these conditions and covenants of the leasehold, and shall subject themselves and their operations to the jurisdiction of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

#### **Section 108. Amendment of Laws, Rules and Regulations**

Nothing herein contained shall be construed to limit the right of the Seminole Nation of Oklahoma, from time to time, to change, modify, waive, update or enact new rules, ordinances and regulations of any treatment works. Such changes, modifications, waivers or new enactments shall be binding on all lessees hereunder the same as if set out in this ordinance.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

#### **Section 109. Sewer Flow Sources**

No new connections from the flow sources into the sanitary sewer portions of the sewer system of the treatment works shall be permitted unless properly designed and constructed according to the technical specifications of the law of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

#### **Section 110. Tribal Inspections**

All lessees and users of any treatment works shall permit inspections by the Seminole Nation of Oklahoma or its designated official representatives, upon such conditions and at such times as the Seminole Nation or its representatives deem desirable.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12, November 16, 1991.]

**Section 111. Federal, State and Local Inspections**

Duly authorized representatives of any Federal, State or local agency engaged in the administration, supervision and management of the treatment works may enter upon the site of any Industrial Park of the Seminole Nation for the purpose of inspecting the use and operation of any treatment works, upon written notice to the duly authorized officials of the Seminole Nation of Oklahoma, provided that said written notice is given within a reasonable time prior to said inspection.

[HISTORY: Enacted by TO 75-1, August 16, 1975; codified by TO 91-12,  
November 16, 1991.]

**TITLE 13  
EVIDENCE CODE  
INDEX**

<b>TITLE 13 EVIDENCE CODE INDEX .....</b>	<b>i</b>
<b>TITLE 13 EVIDENCE CODE.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Scope .....	1
Section 103. Purpose and Construction .....	1
Section 104. Definitions .....	1
Section 105. Rulings on Evidence.....	1
Section 106. Preliminary Questions .....	2
Section 107. Limited Admissibility.....	3
Section 108. Remainder or Related Writings or Recorded Statements .....	3
<b>CHAPTER TWO JUDICIAL NOTICE.....</b>	<b>4</b>
Section 201. Judicial Notice of Adjudicative Facts.....	4
<b>CHAPTER THREE PRESUMPTIONS .....</b>	<b>5</b>
Section 301. Presumptions in General.....	5
<b>CHAPTER FOUR RELEVANCY AND ITS LIMITS.....</b>	<b>6</b>
Section 401. Definition of Relevant Evidence .....	6
Section 402. Relevant Evidence Generally Admissible, Irrelevant Evidence Inadmissible .....	6
Section 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time .....	6
Section 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes.....	6
Section 405. Methods of Proving Character .....	7
Section 406. Habit, Routine Practice .....	7
Section 407. Subsequent Remedial Measure .....	7
Section 408. Compromise and Offers to Compromise .....	8
Section 409. Payment of Medical and Similar Expenses .....	8
Section 410. Inadmissibility of Plea Offers, of Pleas, and Related Statements .....	8
Section 411. Liability Insurance.....	9
<b>CHAPTER FIVE PRIVILEGES .....</b>	<b>10</b>
Section 501. Privileges Recognized Only as Provided .....	10

Section 502.	Lawyer-Client Privilege.....	10
Section 503.	Physician and Psychotherapist – Patient Privilege .....	12
Section 504.	Spousal Privilege.....	13
Section 505.	Religious Privilege .....	14
Section 506.	Political Vote .....	15
Section 507.	Trade Secrets.....	15
Section 508.	Secrets of the Nation and Other Official Information; Governmental Privileges .....	15
Section 509.	Identity of Informer .....	16
Section 510.	Waiver of Privilege by Voluntary Disclosure .....	18
Section 511.	Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.....	18
Section 512.	Comment Upon and Inference from Claim of Privilege; Instruction.....	18
<b>CHAPTER SIX WITNESSES .....</b>		<b>19</b>
Section 601.	General Rules of Competency .....	19
Section 602.	Lack of Personal Knowledge .....	19
Section 603.	Oath or Affirmation.....	19
Section 604.	Interpreters.....	19
Section 605.	Competency of Judge as Witness.....	19
Section 606.	Competency of Juror as Witness.....	20
Section 607.	Who May Impeach .....	20
Section 608.	Evidence of Character and Conduct of Witness.....	20
Section 609.	Impeachment by Evidence of Conviction of Crime .....	21
Section 610.	Religious Beliefs or Opinions .....	22
Section 611.	Mode and Order of Interrogation and Presentation .....	22
Section 612.	Writing Used to Refresh Memory .....	23
Section 613.	Prior Statements of Witnesses.....	23
Section 614.	Calling and Interrogation of Witnesses by Court.....	24
Section 615.	Exclusion of Witness.....	24
<b>CHAPTER SEVEN OPINIONS AND EXPERT TESTIMONY .....</b>		<b>25</b>
Section 701.	Opinion Testimony by Lay Witnesses.....	25
Section 702.	Testimony by Experts.....	25
Section 703.	Bases of Opinion Testimony by Experts .....	25
Section 704.	Opinion on Ultimate Issue .....	25
Section 705.	Disclosure of Facts or Data Underlying Expert Opinion.....	26

Section 706. Court Appointed Experts .....	26
<b>CHAPTER EIGHT HEARSAY.....</b>	<b>27</b>
Section 801. Definitions .....	27
Section 802. Hearsay Rule .....	28
Section 803. Hearsay Exceptions; Availability of Declarant Immaterial .....	28
Section 804. Hearsay Exceptions; Declarant Unavailable .....	31
Section 805. Hearsay Within Hearsay .....	33
Section 806. Attacking and Supporting Credibility of Declarant .....	33
<b>CHAPTER NINE AUTHENTICATION AND IDENTIFICATION .....</b>	<b>34</b>
Section 901. Requirement of Authentication or Identification .....	34
Section 902. Self-Authentication .....	35
Section 903. Subscribing Witness Testimony Unnecessary .....	36
<b>CHAPTER TEN CONTENTS OF WRITING, RECORDINGS, AND PHOTOGRAPHS.....</b>	<b>37</b>
Section 1001. Definitions .....	37
Section 1002. Requirement of Original .....	37
Section 1003. Admissibility of Duplicates .....	37
Section 1004. Admissibility of Other Evidence of Contents .....	38
Section 1005. Public Records.....	38
Section 1006. Summaries .....	38
Section 1007. Testimony or Written Admission of Party .....	39
Section 1008. Functions of Court and Jury .....	39
<b>CHAPTER ELEVEN MISCELLANEOUS RULES.....</b>	<b>40</b>
Section 1101. Applicability of Rules .....	40
Section 1102. Amendments.....	40

**TITLE 13**  
**EVIDENCE CODE**  
**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Title**

This Title may be known and cited as the Rules of Evidence, or the Evidence Code of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 102. Scope**

This Title governs evidentiary questions in all proceedings in the Courts of the Seminole Nation of Oklahoma, whether civil, criminal, juvenile, or otherwise, except as may be otherwise specifically provided by applicable law.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 103. Purpose and Construction**

This Title shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 104. Definitions**

This Title incorporates all terms defined in section 2 of Title 5 unless indicated otherwise.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 105. Rulings on Evidence**

(a) Effect of Erroneous Ruling. Error may not be predicated, nor a judgment reversed or modified, upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

- (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or



(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof, or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. Questions on evidentiary matters known to be in issue prior to trial may be determined by a hearing prior to trial, and the matter does not have to be raised at the trial by the party whose evidence is ruled inadmissible in order to preserve the error so long as the error is apparent from the transcript of the hearing. Questions which arise concerning the admissibility of evidence during the trial may be resolved in open Court, if practicable, at a hearing at the bench out of the hearing of the jury, or a recess may be taken and a hearing held upon the admissibility of the evidence at issue.

(d) Plain Error. Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 106. Preliminary Questions**

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by this Title except those provisions with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or may admit it subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confession in a criminal case shall in all cases be conducted out of the hearing of the jury. Hearing on other preliminary matters shall be so conducted when the interests of justice require or, when an accused in a criminal case is a witness, if he so requests.

(d) Testimony by Accused. The accused in a criminal case does not, by testifying upon a preliminary matter, or other matter which would be heard outside the hearing of the jury, if any, subject himself to cross-examination as to other issues in the case. The accused in a criminal case waives his right against self-incrimination as to all issues in the case by testifying upon any fact pertaining to any element of the charge against him during the actual trial of the case before the jury or other finder of fact.

(e) Weight and Credibility. This section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 107. Limited Admissibility**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 108. Remainder or Related Writings or Recorded Statements**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER TWO JUDICIAL NOTICE**

### **Section 201. Judicial Notice of Adjudicative Facts**

- (a) Scope of Chapter. This Chapter governs only judicial notice of adjudicative facts.
- (b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
  - (1) generally known within the territorial jurisdiction of the court; or,
  - (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) When Discretionary. The court may take judicial notice of a fact, whether requested or not.
- (d) When Mandatory. The court shall take judicial notice if requested by a party and supplied with the necessary information, or when required to do so by applicable law.
- (e) Opportunity to be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.
- (g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER THREE PRESUMPTIONS**

### **Section 301. Presumptions in General**

In all civil and criminal actions and proceedings, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift the risk of non-persuasion, which remains upon the party on whom it was originally cast.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER FOUR RELEVANCY AND ITS LIMITS**

### **Section 401. Definition of Relevant Evidence**

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 402. Relevant Evidence Generally Admissible. Irrelevant Evidence Inadmissible**

All relevant evidence is admissible, except as otherwise provided by applicable law or court rule. Evidence which is not relevant is not admissible.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence, or if it is inadmissible pursuant to some section of this Title.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 404. Character Evidence Not Admissible to Prove Conduct; Exceptions: Other Crimes**

(a) Character Evidence Generally. Evidence of a person’s character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except;

- (1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence;
- (2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

- (3) Character of Witness. Evidence of the character of a witness, as provided in sections 607, 608, and 609 of this Title.
- (4) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 405. Methods of Proving Character**

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof may be offered of specific instances of the person's conduct.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 406. Habit, Routine Practice**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 407. Subsequent Remedial Measure**

When after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event, in order to encourage additional safety measures to be taken for the protection of the public whether or not the previous measures were sufficient to prevent a finding of negligent or culpable conduct. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if these matters are a matter of controversy or impeached by either party.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 408. Compromise and Offers to Compromise**

(a) In order to encourage the non-judicial settlement of disputes, evidence is not admissible to prove liability for or invalidity of the claim or its amount if valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is offered in the following ways:

- (1) furnishing or offering or promising to furnish, or
- (2) accepting or offering or promising to accept.

(b) Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

(c) This section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

(d) This section also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 409. Payment of Medical and Similar Expenses**

In order to encourage non-judicial settlement of disputes and to encourage persons to assist one another for their joint benefit, evidence of furnishing or offering or promising to pay, or the payment of medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. Evidence of payment of such charges may be introduced by the person making such payment for the purpose of reducing a judgment for damages.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 410. Inadmissibility of Plea Offers, of Pleas, and Related Statements**

(a) Except as otherwise provided in this section, evidence of a plea of guilty later withdrawn, or a plea of nolo contendere, or of any offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

(b) However, evidence of a statement made in connection with, and relevant to, a plea of guilty later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo

contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(c) A plea of guilty which has not been withdrawn, and statements made in connection with the plea are admissible if relevant in any criminal or civil proceeding.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 411. Liability Insurance**

(a) Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(l) In the sound discretion of the District Court, and subject to any exclusionary rule enacted by Supreme Court, evidence that a person was or was not insured against liability and the limits of coverage and other relevant factors is admissible in a bifurcated jury or judge trial sounding in tort, or otherwise, in the second phase of the trial upon the issue of the amount of actual and consequential damages to be awarded, after liability has been determined in the first phase of the trial, as provided in the Civil Procedure Code.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]



## **CHAPTER FIVE PRIVILEGES**

### **Section 501. Privileges Recognized Only as Provided**

Except as otherwise provided by applicable law, including federal law, or as may be required by federal law, no person has a privilege to:

- (a) refuse to be a witness;
- (b) refuse to disclose any matter;
- (c) refuse to produce any object or writing; or
- (d) prevent another from being a witness or disclosing any matter or producing any object or writing.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 502. Lawyer-Client Privilege**

- (a) Definitions. As used in this section:
  - (1) A “client” is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.
  - (2) A “representative of the client” is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.
  - (3) A “lawyer” is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law pursuant to rules enacted by the Supreme Court of the Seminole Nation, or, in the absence of such rules, an attorney licensed to practice by any state.
  - (4) A “representative of the lawyer” is one employed by the lawyer to assist the lawyer in the offering of professional legal services.
  - (5) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the retention of professional legal services to the client or those reasonably necessary for the transmission of the communication, including close relatives who assist the client in obtaining legal counsel and whom the client requests to be present during discussions with the lawyer for the purpose of obtaining representation.

- (6) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client
- (A) between himself or his representative and his lawyer or his lawyer's representative;
  - (B) between his lawyer and the lawyer's representative;
  - (C) by him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
  - (D) between representatives of the client or between the client and a representative of the client; or
  - (E) among lawyers and their representatives representing the same client.
- (7) Who May Claim the Privilege. The privilege may be claimed by the client, his guardian or conservator or close relative who assists in obtaining legal representation, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege on behalf of the client.
- (8) Exceptions. There is no privilege under this section if the following occurs:
- (A) Furtherance of Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
  - (B) Claimants Through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter-vivos transaction;
  - (C) Breach of Duty by a Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

- (D) Document Attested by a Lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;
- (E) Joint Clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients or;
- (F) Public Officer or Agency. As to a communication between a public officer or agency and its lawyer unless the communication concerns a pending or contemplated investigation, claim, or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest. Communications between the Nation (including any agency or entity owned by or related to the Nation) or any of its officers, agents, representatives, or employees and the Attorney General of the Nation or other properly retained legal counsel are not within this exception unless such communications have been released for public information with the approval of the General Council.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 503. Physician and Psychotherapist – Patient Privilege**

- (a) Definitions. As used in this section:
  - (1) A “patient” is a person who consults or is examined or interviewed by a physician or psychotherapist.
  - (2) A “physician” is a person authorized to practice medicine or the healing arts by any Indian Tribe, or state, or nation, or reasonably believed by the patient so to be.
  - (3) A “psychotherapist” is:
    - (A) a person authorized to practice medicine or the healing arts by any Indian Tribe, or state, or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or
    - (B) a person licensed or certified as a psychologist under the laws of any Indian Tribe, or state, or nation while similarly engaged.

(b) A communication is “confidential” if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient’s family.

(c) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including alcohol or drug addiction, among himself, his physical or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient’s family.

(d) Who May Claim the Privilege. The privilege may be claimed by the patient, his guardian, or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication, and any other person directly involved in treatment sessions are presumed to have authority to claim the privilege but only on behalf of the patient.

(e) Exceptions.

(1) Proceeding for Hospitalization. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the physician or psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) Examination by Order of Court. If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course of the examination are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(f) Condition an Element of Claim or Defense. There is no privilege under this section as to a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense or, after the patient’s death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 504. Spousal Privilege**

(a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) General Rule of Privilege. An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse.

(c) Exceptions. There is no privilege under this section in a proceeding for legal separation or divorce between the parties when the communication is relevant to the issues in the action for separate maintenance or divorce, or in which one spouse is charged with a crime against the person or property of:

- (1) the other,
- (2) a child of either,
- (3) a person residing in the household of either, or
- (4) a third person committed in the course of committing a crime against any of the above.

(d) Except in an action brought by the Nation to protect a child subject to abuse, neglect, or other cause which is sufficient to maintain a juvenile court action, testimony received pursuant to the above exception in an action for divorce or legal separate between the husband and wife may not be used or referred to in any other proceeding between either the husband or wife and third persons.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 505. Religious Privilege**

(a) Definitions. As used in this section:

- (1) A “clergyman” is a minister, priest, rabbi, accredited Christian Science practitioner, Native American Roadman, properly authorized traditional band or society headman or firekeeper or other similar functionary of a religious organization of a recognized active traditional Tribal religion, or an individual reasonably believed so to be by the person consulting him.
- (2) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present or to other persons to whom disclosure would be privileged under this Title if the disclosure had been made directly to such other person in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 506. Political Vote**

(a) General Rule of Privilege. Every person has a privilege to refuse to disclose the tenor of his vote at any political election conducted by secret ballot.

(b) Exceptions. This privilege does not apply if the court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to Title 10.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 507. Trade Secrets**

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 508. Secrets of the Nation and Other Official Information: Governmental Privileges**

(a) If the law of the United States creates a governmental privilege that the courts of this Nation must recognize under the Constitution and statutes of the United States, the privilege may be claimed as provided by the law of the United States.

- (1) No other special governmental privilege is recognized except as created by applicable law.
- (2) Privileges Recognized. The following governmental privileges are recognized:

- (A) Elected members of the General Council have a privilege against disclosure of their mental processes and reasoning in the casting of any vote by them at a duly constituted meeting of that body, except in cases where it is alleged that unlawful influence or bribery or attempted bribery was involved in that vote. This privilege may be claimed only by the member and is waived if the member testifies as to such matters.
  - (B) Justices, judges and similar judicial officers have a privilege against disclosure of their mental processes and reasoning in the determination of any matter before them in any proceeding collateral to that matter, except in a collateral proceeding where it is alleged that unlawful influence or bribery or attempted bribery was involved in the underlying matter. The explanation and reasons for the decision of judicial officers which should appear on the record shall be sufficient. This section shall not preclude the Supreme Court from remanding an action to a judge for further findings of fact or conclusions of law in order to obtain an adequate record for review or to determine all issues necessary to a decision in a case.
  - (C) Governmental officers charged with the institution of legal proceedings before any agency of the Nation or the Courts to enforce the Nation's laws have a privilege against disclosure of their mental processes and reasoning in the determination of any matter brought before them for a decision as to whether or not to institute such legal proceedings.
- (3) Effect of Sustaining Claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further order the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding against the Government upon an issue as to which the evidence is relevant, or dismissing the action.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 509. Identity of Informer**

(a) Rule of Privilege. The Nation, the United States, or a state, or a subdivision thereof having police powers has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

- (1) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.
- (2) Exceptions:
  - (A) Voluntary Disclosure; Informer a Witness. No privilege exists under this section if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent or be adversely affected by the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.
  - (B) Testimony on Relevant Issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following:
    - (i) requiring the prosecuting attorney to comply with a defense request for relevant information;
    - (ii) granting the defendant additional time or a continuance;
    - (iii) relieving the defendant from making disclosures otherwise required of him;
    - (iv) prohibiting the prosecuting attorney from introducing specific evidence; or
    - (v) dismissing the charges against the defendant.

In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court in camera shall be sealed and preserved to be made available to the Supreme Court in the event of an appeal, and the contents shall not otherwise be revealed without the consent of the informed public entity.



- (3) All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 510. Waiver of Privilege by Voluntary Disclosure**

A person upon whom this Chapter confers a privilege against disclosure waives the privileges if he or his predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This section does not apply if the disclosure itself is privileged.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege**

A claim of privilege is not defeated by a disclosure which was: (a) compelled erroneously; or (b) made without opportunity to claim the privilege.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 512. Comment Upon and Inference from Claim of Privilege: Instruction**

(a) Comment or Inference not Permitted. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn from the claim of privilege.

(b) Claiming Privilege without Knowledge of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury Instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn from the claim.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER SIX WITNESSES**

### **Section 601. General Rules of Competency**

Every person is competent to be a witness except as otherwise provided in this Title or other applicable law.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 602. Lack of Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This section is subject to provisions of section 703 of this Title, relating to opinion testimony by expert witnesses.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 603. Oath or Affirmation**

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 604. Interpreters**

An interpreter is subject to the provisions of this Title relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 605. Competency of Judge as Witness**

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 606. Competency of Juror as Witness**

(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention, whether the jury determined the verdict, amount of damages, sentence or other matter relevant to a determination of the issues in the case by flipping a coin, or other method determined by chance, or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 607. Who May Impeach**

The credibility of a witness may be attacked by any party, including the party calling the witness.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 608. Evidence of Character and Conduct of Witness**

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

- (1) the evidence may refer only to character for truthfulness or untruthfulness, and
- (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Special Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in section 609, may not be proved by extrinsic evidence. Specific instances of conduct may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness such as the following:

- (1) concerning the character of the witness for truthfulness or untruthfulness;  
or
- (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) Special Rule for Criminal Cases. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 609. Impeachment by Evidence of Conviction of Crime**

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime met one of the following criteria:

- (1) was punishable by death or imprisonment in excess of one (1) year under a federal or state law, under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant (if it is the defendant in a criminal case whose credibility is being questioned); or
- (2) involved dishonesty or false statement, regardless of the punishment or jurisdiction involved; or
- (3) was punishable by banishment or imprisonment for six (6) months or more, or is otherwise classified as a serious offense under the laws of an Indian Tribe in whose courts the conviction was obtained.

(b) Time Limit. Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has lapsed since the date of the conviction or of the release of the witness from the confinement or other punishment imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence. Subject to subsection (c) of this section and the discretion of the court, such convictions are admissible if other admissible convictions not ten (10) years old as calculated herein have occurred since the conviction in question.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this section if one of the following has occurred:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which would be admissible under subparagraph (a) above; or
- (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this section. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness, other than the accused, if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence of the accused.

(e) Pendency of Appeal. The pendency of an appeal does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible when evidence of the underlying convictions in the case, has been introduced.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 610. Religious Beliefs or Opinions**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reasons of their nature his credibility is impaired or enhanced.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 611. Mode and Order of Interrogation and Presentation**

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (1) make the interrogation and presentation effective for the ascertainment of the truth;
- (2) avoid needless consumption of time; and
- (3) protect witnesses from unnecessary harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) **Leading Questions.** A leading question is ordinarily a question which calls for a yes or no answer. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a child of young age, or other person who may have significant trouble understanding questions due to age, infirmity, lack of understanding of the English language, or other cause, a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 612. Writing Used to Refresh Memory**

(a) If a witness uses a writing to refresh his memory either while testifying or before testifying, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

(b) If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, exercise any portions not so related and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the Supreme Court in the event of an appeal.

(c) If a writing is not produced or delivered pursuant to order of the court under this section, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the court may declare a mistrial.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 613. Prior Statements of Witnesses**

(a) **Examining Witness Concerning Prior Statements.** In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) **Extrinsic Evidence of Prior Inconsistent Statements of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposing party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party opponent as defined in section 801(d)(2) of this Title.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 614. Calling and Interrogation of Witnesses by Court**

(a) Calling by Court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses so called.

- (1) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.
- (2) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. Ordinarily, the court should exercise its authority to call or question witnesses with great restraint in jury trial.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 615. Exclusion of Witness**

At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. The request to exclude witnesses may be made by a party by requesting that the court “invoke the rule” or words of similar import. This rule does not authorize exclusion of the following:

- (a) a party who is a natural person, or
- (b) an officer or employee of a party, designated as its representative by its attorney, when the party is not a natural person, or
- (c) a person whose presence is shown by a party to be essential to the presentation of the cause.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER SEVEN**

### **OPINIONS AND EXPERT TESTIMONY**

#### **Section 701. Opinion Testimony by Lay Witnesses**

If the witness is not testifying as an expert, his testimony in the form of opinion or inferences is limited to those opinions or inferences which are found to be the following:

- (a) rationally based on the perception of the witness;
- (b) helpful to a clear understanding of his testimony or the determination of a fact in issue; and
- (c) upon a subject which it is presumed that the general public has sufficient knowledge to reach a reasonable opinion, conclusion, or inference.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the court to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 703. Bases of Opinion Testimony by Experts**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 704. Opinion on Ultimate Issue**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by court.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]



## **Section 705. Disclosure of Facts or Data Underlying Expert Opinion**

The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 706. Court Appointed Experts**

(a) Appointment. The Court may, on its own motion or on the motion of any party, enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act as an expert witness. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from the Court Fund, said fund to be reimbursed by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' Experts of Own Selection. Nothing in this section limits the parties in calling expert witnesses of their own selection and to be compensated at their own expense.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER EIGHT HEARSAY**

### **Section 801. Definitions**

The following definitions apply under this Chapter:

- (a) A “statement” is defined as:
  - (1) an oral or written assertion; or
  - (2) non-verbal conduct of a person, if it is intended by him as an assertion.
- (b) A “declarant” is a person who makes a statement.
- (c) “Hearsay” is a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted. This section generally includes affidavits and notarized statements unless made admissible by some other of these rules.
- (d) A statement is not hearsay if one of the following two (2) exceptions is met:
  - (1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:
    - (A) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or
    - (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or
    - (C) one of identification of a person or object made after perceiving him or it; or
  - (2) Admission by Party-Opponent. The statement is offered against a party and is:
    - (A) his own statement, in either his individual or a representative capacity; or
    - (B) a statement of which he has manifested his adoption or belief in its truth; or
    - (C) a statement by a person authorized by him to make a statement concerning the subject, or

- (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or
- (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 802. Hearsay Rule**

Hearsay is not admissible except as provided by this Title or court rule.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 803. Hearsay Exceptions: Availability of Declarant Immaterial**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (a) **Present Sense Impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- (b) **Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (c) **Then Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- (d) **Statements for Purposes of Medical Diagnosis or Treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception, or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
- (e) **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(f) **Records of Regularly Conducted Activity.** A memorandum, report, record, or data compilation, in any form, concerning acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(g) **Absence of Entry in Records Kept in Accordance with the Provisions of subsection (f) of this Section.** Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provision of subsection (f), to prove the non-occurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) **Public Records and Reports.** Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

- (1) the activities of the office or agency, or
- (2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or
- (3) in civil actions and proceedings, and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(i) **Records of Vital Statistics.** Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(j) **Absence of Public Record or Entry.** To prove the absence of a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with section 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(k) **Records of Religious Organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood, marriage, or other similar acts of personal or family history, contained in regularly kept record of a religious organization.

(l) **Marriage, Baptismal, and Similar Certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a

religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(m) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(n) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(o) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(p) Statements in Ancient Documents. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

(q) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations generally used and relied upon by the public or by persons in particular occupations.

(r) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination, or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or, established as a reliable authority by the testimony or admission of the witness or by other expert witness or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(s) Reputation Concerning Personal or Family History. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his person or family history.

(t) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the Nation or community or State in which located.

(u) Reputation as to Character. Reputation of a person's character among his associates or in the community.

(v) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty

of a crime or offense, to prove any fact essential to sustain the judgment in the criminal case as against person in any civil case, but not against the accused in a criminal case. The pendency of any appeal may be shown but does not affect admissibility.

(w) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that

- (1) the statement is offered as evidence of a material fact;
- (2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
- (3) the general purposes of this Title and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 804. Hearsay Exceptions: Declarant Unavailable**

- (a) “Unavailability as a witness” includes situations in which the declarant:
- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement;
  - (2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so;
  - (3) testifies to a lack of memory of the subject matter of his statement;
  - (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
  - (5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (a) (2), (3), or (4), his attendance or testimony) by process or other reasonable means.
- (b) A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(c) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

- (1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
- (2) Statement under Belief of Impending Death. In a prosecution for homicide or in civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.
- (3) Statement against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) Statement of Personal or Family History.
  - (A) a statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or
  - (B) a statement concerning the foregoing matters and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
- (5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:
  - (A) the statement is offered as evidence of a material fact;
  - (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

- (C) the general purposes of this Title and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012; section number corrected on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 805. Hearsay Within Hearsay**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this Title.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**Section 806. Attacking and Supporting Credibility of Declarant**

When a hearsay statement, or a statement defined in section 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he be afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]



## **CHAPTER NINE**

### **AUTHENTICATION AND IDENTIFICATION**

#### **Section 901. Requirement of Authentication or Identification**

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this section:

- (1) Testimony of Witness with Knowledge. Testimony that a matter is what it is claimed to be.
- (2) Non-expert Opinion on Handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation.
- (3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.
- (4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
- (5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
- (6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:
  - (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or
  - (B) in the case of business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
- (7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

- (8) Ancient Documents or Data compilation. Evidence that a document or data compilation, in any form:
  - (A) is in such condition as to create no suspicion concerning its authenticity,
  - (B) was in a place where it, if authentic, would be likely to be, and
  - (C) has been in existence twenty (20) years or more at the time it is offered.
- (9) Methods Provided by Statute or Rule. Any method of authentication or identification provided by applicable law or court rules.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **Section 902. Self-Authentication**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents under Seal. A document bearing a seal purporting to be that of the United States, or of any Indian Tribe, any State, District, Commonwealth, territory, or insular possession thereof, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not under Seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

- (1) of the executing or attesting person, or
- (2) of any foreign official whose certificate of genuineness of signature and official position related to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of

the foreign county assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidence by an attested summary with or without final certification.

(d) **Certified Copies of Public Records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (a), (b), or (c) of this section or complying with any other applicable law or Court rule.

(e) **Official Publications.** Books, pamphlets, or other publications purporting to be issued by public authority.

(f) **Newspapers and Periodicals.** Printed materials purporting to be newspapers or periodicals.

(g) **Trade Inscriptions and the Like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) **Acknowledged Documents.** Documents accompanied by a certificate of acknowledgment executed in the manners provided by law by a notary public or other officer authorized by law to take acknowledgments or administer oaths.

(i) **Commercial Paper and Related Documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) **Presumptions under Acts or Ordinances.** Any signature, documents, or other matter declared by applicable law to be presumptively or prima facie genuine or authentic.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 903. Subscribing Witness Testimony Unnecessary**

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction of which the laws govern the validity of the writing.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER TEN**

### **CONTENTS OF WRITING, RECORDINGS, AND PHOTOGRAPHS**

#### **Section 1001. Definitions**

For the purpose of this article the following definitions are applicable:

(a) “Writings” and “recordings” consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) “Photographs” include still photographs, x-ray films, video tapes, and motion pictures.

(c) An “original” of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An “original” of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an “original.”

(d) A “duplicate” is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent digital or analog techniques which accurately reproduces the original or stores a digital copy thereof.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1002. Requirement of Original**

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by applicable law.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1003. Admissibility of Duplicates**

A duplicate is admissible to the same extent as an original unless:

- (a) a genuine question is raised as to the authenticity of the original, or
- (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1004. Admissibility of Other Evidence of Contents**

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

- (a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
- (b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or
- (c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or
- (d) Collateral Matters. The writings, recording, or photograph is not closely related to a controlling issue.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1005. Public Records**

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with section 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

#### **Section 1006. Summaries**

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1007. Testimony or Written Admission of Party**

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the non-production of the original.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1008. Functions of Court and Jury**

When the admissibility of other evidence of contents and writings, recordings, or photographs under this Title depends upon the fulfillment of a condition or fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with provisions of section 104 of this Title. However, when an issue is raised, it is the court that determines admissibility in the case of other issues of fact in the following instances:

- (a) whether the asserted writing ever existed; or
- (b) whether another writing, recording, or photograph produced at the trial is the original; or
- (c) whether other evidence of contents correctly reflects the contents, the issue is for the court to determine as in the case of other issues of fact.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

## **CHAPTER ELEVEN MISCELLANEOUS RULES**

### **Section 1101. Applicability of Rules**

(a) The Evidence Code applies to all criminal and civil controversies arising from any transaction or occurrence occurring on land which lies within the Nation's jurisdiction and to all other criminal or civil controversies which are subject to the lawful jurisdiction of the Nation's Courts.

(b) The Evidence Code applies generally to civil actions and proceedings, to criminal actions and proceedings and to contempt proceedings, except those in which the court may act summarily.

(c) The Chapter with respect to privileges applies at all stages of all actions, cases, and proceedings within the Nation's Courts.

(d) This Title (other than with respect to privileges) does not apply in the following situations:

- (1) When the court must make preliminary findings of fact in order to rule on the admissibility of evidence under section 104.
- (2) Proceedings for extradition, preliminary examinations and arraignments in criminal cases, sentencing, granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants, the dispositional phase of juvenile proceedings, and proceedings with respect to release on bail or otherwise.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

### **Section 1102. Amendments**

The Supreme Court shall have the power to propose amendments to this Title except with respect to rules relating to privileges. Any proposed amendment shall have no force or effect unless it shall be approved by the General Council. Upon becoming effective, all amendments proposed by the Supreme Court shall be incorporated into this Title and thereafter have the force and effect of law.

[HISTORY: Enacted by TO 92-5, June 6, 1992; amended by TO 2010-04, June 5, 2010; approved by BIA February 2, 2012.]

**TITLE 13A  
FAMILY  
INDEX**

<b>TITLE 13A FAMILY INDEX .....</b>	<b>i</b>
<b>TITLE 13A FAMILY .....</b>	<b>1</b>
<b>CHAPTER ONE.....</b>	<b>1</b>
Section 101. Placement.....	1
<b>CHAPTER TWO ELDERS .....</b>	<b>2</b>
Section 201. Elder Policy.....	2
Section 202. Older Americans Program Advisory Committee; Qualification; Appointment; Removal.....	2
Section 203. Term .....	3
Section 204. Duties.....	3
Section 205. OAP Advisory Committee Activities Limited .....	3
Section 206. OAP Advisory Committee: Compensation.....	4



**TITLE 13A**  
**FAMILY**  
**CHAPTER ONE**

**Section 101. Placement**

(a) Pursuant to 25 U.S.C. § 1915 and in the best interests of Seminole children, the General Council of the Seminole Nation of Oklahoma hereby establishes a descending order of placement preferences to be in a home as follows:

- (1) A Seminole member of the Seminole child's extended family, as approved by the Seminole Nation of Oklahoma, Indian Child Welfare Department;
- (2) A Native American member of the Seminole child's extended family, as approved by the Seminole Nation of Oklahoma, Indian Child Welfare Department;
- (3) A member of the Seminole Child's extended family, as approved by the Seminole Nation of Oklahoma, Indian Child Welfare Department;
- (4) A member of the Seminole Child's Tribe, as approved by the Seminole Nation of Oklahoma, Indian Child Welfare Department;
- (5) A member of any other Native American Tribe, as approved by the Seminole Nation of Oklahoma, Indian Child Welfare Department; or
- (6) Any other suitable and approved, or licensed home or institution as approved by the Seminole Nation of Oklahoma, Indian Child Welfare.

[HISTORY: Enacted by TO 2003-18, September 27, 2003; amended by TO 2011-07, June 4, 2011.]

## **CHAPTER TWO ELDERS**

### **Section 201. Elder Policy**

It is the policy of the Seminole Nation of Oklahoma to honor the cultural tradition of holding Tribal Elders in the highest regard. The Seminole Nation shall endeavor to meet the needs of its Elders and promote the highest quality of living and health care.

[HISTORY: Enacted by TO 2012-01, January 28, 2012; renumbered from Section 100 to Section 201 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 202. Older Americans Program Advisory Committee: Qualification: Appointment: Removal**

(a) The Older American's Program serves Tribal Elders and their spouses 55 years of age and older, as well as those who meet the handicapped and Title VI requirements. The program provides the following services: nutritious meals, cultural meals, cultural activities, advocacy, information and referral.

(b) The Seminole Nation of Oklahoma shall officially establish an Older Americans Program (OAP) Advisory Committee, which shall be charged and empowered with the duties and responsibilities listed in Section 204 of Title 13A.

(c) The OAP Advisory Committee shall be a five (5) member Committee:

- (1) Eligibility for appointment to the OAP Advisory Committee shall be those program participants who meet the same eligibility requirements for Title VI Program participation.
- (2) Committee members shall be appointed with the following order of preference: (1) members of the Nation, (2) members of other federally-recognized Tribes; and (3) non-Natives.
- (3) The Principal Chief shall appoint the members of the OAP Advisory Committee, subject to confirmation of the General Council.
- (4) At least three (3) official Committee members shall be in attendance in order to establish a quorum.
- (5) In the event of vacancies, the Committee may make recommendations for nomination and consideration.

(d) The first meeting of the OAP Advisory Committee shall be after at least three (3) appointments are confirmed by the General Council. At the first meeting of the OAP Advisory Committee, the members shall select within their membership a Chairman, Vice-Chairman and Recording Secretary. Thereafter, meetings shall be quarterly.

(e) The Principal Chief of the Seminole Nation of Oklahoma may at any time recall the appointment of any member of the OAP Advisory Committee for good cause shown, subject to the approval of a majority vote of the council.

(f) Voting on agenda items by the OAP Advisory Committee shall be by roll call vote and shall be recorded by the Recording Secretary.

(g) The OAP Advisory Committee shall enact bylaws to govern parliamentary procedures and meeting notices. The bylaws shall be submitted to the General Council Secretary.

[HISTORY: Enacted by TO 2012-01, January 28, 2012; renumbered from Section 101 to Section 202 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 203. Term**

The term of OAP Advisory Committee members shall be four (4) years from the date of appointment by the Chief and confirmation of the General Council.

[HISTORY: Enacted by TO 2012-01, January 28, 2012; renumbered from Section 102 to Section 203 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 204. Duties**

The duties of the OAP Advisory Committee shall include the following:

(a) Make recommendations for implementation of any long- and short-range plans and goals for the immediate and future needs of the OAP Program and the Elders of the Seminole Nation consistent with the delivery of services including but not limited to: nutrition services, support services and referrals, and transportation; and

(b) Provide insight, advice, and opinions about OAP services to both the General Council and the OAP Director; and

(c) Perform any additional advisory duties as assigned by the OAP Director, Principal Chief, or the General Council.

[HISTORY: Enacted by TO 2012-01, January 28, 2012; renumbered from Section 103 to Section 204 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 205. OAP Advisory Committee Activities Limited**

It shall not be the responsibility of the Committee to make decisions concerning (1) employee or staffing matters; (2) approval of policies and procedures; or (3) program budgets. The OAP Director shall not be required to seek approval for program or management decisions from the

Committee; however, they should foster an advisory relationship that allows Elders the opportunity to make suggestions and have input into the delivery of services.

[HISTORY: Enacted by TO 2012-01, January 28, 2012; renumbered from Section 104 to Section 205 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 206. OAP Advisory Committee: Compensation**

Pursuant to Title 16, Section 602, in which all members, Committees, Boards and Task Forces of the Seminole Nation receive a stipend of Fifty Dollars (\$50.00), this law shall apply to person appointed to the Committee who attend the meetings of OAP Advisory Committee. If the amount paid to members of Committees, Boards and Task Forces of the Seminole Nation is modified in Title 16, Section 602, the modifications shall also apply to the OAP Advisory Committee.

[HISTORY: Enacted by TO 2012-01, January 28, 2012; renumbered from Section 105 to Section 206 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[HISTORY NOTE: Chapter 2 of Title 13A, enacted by TO 2012-09, July 28, 2012, was recodified on June 13, 2016 to Title 13B pursuant to authority granted by SNC Title 21, § 203; Chapter 3 of Title 13A, enacted by TO 2012-08, July 28, 2012, was recodified on June 13, 2016 to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 13B  
DOMESTIC RELATIONS  
INDEX**

<b>TITLE 13B DOMESTIC RELATIONS INDEX.....</b>	<b>i</b>
<b>TITLE 13B DOMESTIC RELATIONS CODE.....</b>	<b>1</b>
<b>CHAPTER ONE MARRIAGE; DIVORCE; CUSTODY; CHILD SUPPORT; PATERNITY .....</b>	<b>1</b>
<b>SUBCHAPTER A GENERAL PROVISIONS .....</b>	<b>1</b>
Section 101. Authority .....	1
Section 102. Applicability .....	1
Section 103. Definitions .....	1
<b>SUBCHAPTER B MARRIAGE AND ANNULMENT.....</b>	<b>3</b>
Section 104. Marriage is a Contract .....	3
Section 105. Who may Contract; Marriageable Age.....	3
Section 106. Who may not Contract; Invalid or Prohibited Marriages .....	3
Section 107. Identification of Parties.....	4
Section 108. Marriage License.....	4
Section 109. Fee .....	4
Section 110. Solemnization of Marriage Contract .....	4
Section 111. Common Law Marriage.....	5
Section 112. Grounds for Annulment or Voidable Marriage.....	5
Section 113. Delivery and Filing of Marriage Certificate .....	5
<b>SUBCHAPTER C DIVORCE AND CUSTODY.....</b>	<b>6</b>
Section 114. Authority.....	6
Section 115. Purpose and Construction. ....	6
Section 116. Petition and Response.....	6
Section 117. Prohibited Acts During the Pendency of Divorce .....	7
Section 118. Judgment of Divorce .....	8
Section 119. Irretrievable Breakdown. ....	9
Section 120. Actions of the Court Pending Divorce .....	9
Section 121. Provision for Judgment.....	10
Section 122. Revision of Legal Custody and Physical Placement Order .....	13
Section 123. Effect of Judgment .....	15
Section 124. Visitation Rights of Certain Persons .....	15

Section 125. Fees.....	15
<b>SUBCHAPTER D PATERNITY .....</b>	<b>16</b>
Section 126. General.....	16
Section 127. Foreign Paternity Orders and Affidavits.....	16
Section 128. Paternity Petitions .....	17
Section 129. Genetic Test .....	18
Section 130. Paternity Hearings .....	19
Section 131. Paternity Orders .....	21
<b>SUBCHAPTER E CHILD SUPPORT; ENFORCEMENT .....</b>	<b>24</b>
Section 132. Authority.....	24
Section 133. General.....	24
Section 134. Policy .....	24
Section 135. Duty of Care and Support .....	25
Section 136. Child Support Enforcement Agency .....	25
Section 137. Child/Family Protection Petition and Guardianship Cases.....	25
Section 138. Petition for Child Support.....	26
Section 139. Documents and Notice to Child Support Agency .....	28
Section 140. Initial Child Support Hearing.....	28
Section 141. Proposed Agreed Orders.....	31
Section 142. Establishment of Child Support Obligation.....	32
Section 143. Findings of Fact and Conclusions of Law .....	33
Section 144. Child Support Order .....	35
Section 145. Default Child Support Orders .....	36
Section 146. Modification of Foreign Court Child Support Orders.....	36
Section 147. Enforcement of Child Support Orders.....	37
Section 148. Transfer/Assignment of TANF Recipients' Rights .....	42
Section 149. Distribution of Child Support Payments .....	43
Section 150. Reduction of Past Child Support Owed.....	44
Section 151. Child Support Guidelines .....	48
Section 152. Child Support Schedule .....	56
Section 153. Child Support Review Hearings .....	57
Section 154. Court Appeals .....	58
Section 155. Severability .....	58
<b>SUBCHAPTER F RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS .....</b>	<b>59</b>

Section 156.	Purpose .....	59
Section 157.	Definitions .....	59
Section 158.	Foreign Child Support Order .....	59
Section 159.	Hearing .....	60
Section 160.	Judgment.....	60
Section 161.	Modification of a Foreign Child Support Order.....	61
Section 162.	Enforcement.....	61
Section 163.	Termination.....	62
<b>SUBCHAPTER G JURISDICTION AND COURT PROCEDURES .....</b>		<b>62</b>
Section 164.	Tribal Enrollment Records.....	62
Section 165.	Jurisdiction.....	62
Section 166.	Procedures - General .....	63
Section 167.	Summons .....	64
Section 168.	Hearings.....	65
Section 169.	Service of Documents Other than Summons and Petition.....	66
Section 170.	Evidence and Burden of Proof.....	66
Section 171.	Recognition and Enforcement of Other Courts' Orders .....	66
Section 172.	Transfer of Jurisdiction.....	67
<b>CHAPTER TWO THIRD PARTY GUARDIANSHIP.....</b>		<b>68</b>
<b>SUBCHAPTER A GENERAL PROVISIONS, POLICIES AND DEFINITIONS .....</b>		<b>68</b>
Section 201.	Authority.....	68
Section 202.	Purpose .....	68
Section 203.	Definitions .....	68
<b>SUBCHAPTER B APPOINTMENT OF GUARDIAN.....</b>		<b>70</b>
Section 204.	Appointment of Guardian Generally .....	70
Section 205.	Types of Guardianships .....	71
<b>SUBCHAPTER C GUARDIANSHIP PREFERENCES, POWERS AND DUTIES; LIMITATIONS .....</b>		<b>72</b>
Section 206.	Guardianship Preferences and Order.....	72
Section 207.	General Guardianship Duties and Powers .....	72
Section 208.	Limitations Placed on the Guardian. ....	73
<b>SUBCHAPTER D GUARDIANSHIP PROCEDURES .....</b>		<b>74</b>
Section 209.	Jurisdiction.....	74
Section 210.	Initiating an Action.....	75
Section 211.	Service of Process .....	76



Section 212.	Additional Guardianship Procedures .....	78
Section 213.	Guardianship Hearing Procedures.....	81
Section 214.	Disposition of Petition. ....	82
<b>SUBCHAPTER E COURT ORDERS .....</b>		<b>83</b>
Section 215.	Court Orders Generally .....	83
Section 216.	Management of Property .....	83
Section 217.	Annual Guardianship Report .....	84
Section 218.	Child Support .....	84
Section 219.	Visitation Rights.....	85
Section 220.	Co-Guardians .....	85
Section 221.	Name Change.....	85
<b>SUBCHAPTER F MODIFICATION, REVOCATION AND TERMINATION .....</b>		<b>85</b>
Section 222.	Judgments Inoperative After Age 18.....	85
Section 223.	Motions to Modify Guardianship.....	86
Section 224.	Motions to Revoke Guardianship.....	86
Section 225.	Motions to Remove Guardian. ....	87
Section 226.	Motions to Terminate Guardianship Orders .....	88
Section 227.	Successor Guardian. ....	89
<b>SUBCHAPTER G APPEALS .....</b>		<b>90</b>
Section 228.	Court Appeals .....	90

**TITLE 13B  
DOMESTIC RELATIONS CODE**

**CHAPTER ONE  
MARRIAGE; DIVORCE; CUSTODY; CHILD SUPPORT; PATERNITY**

**SUBCHAPTER A  
GENERAL PROVISIONS**

**Section 101. Authority**

Article V, Section 2(a) of the Seminole Nation Constitution grants the Legislature the power to make laws, including Codes, Titles, Resolutions, and Statutes.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

**Section 102. Applicability**

(a) This Title authorizes the Seminole Nation District Court to issue marriage licenses and perform marriages in which one or both parties to the marriage is a member of the Seminole Nation or resides within the jurisdiction of the Seminole Nation; or where one or both parties are Native American.

(b) The procedures set forth herein shall be exclusive as to any marriage performed by the Court in the Nation's jurisdiction, in which one or both parties are members of the Seminole Nation.

(c) There is concurrent jurisdiction with the procedures established by the law of the State of Oklahoma as to any marriage performed within the Nation's jurisdiction in which one party is not a member of the Seminole Nation or does not reside in the Nation's jurisdiction. The completion of an application for a marriage license under this Title constitutes the nonmember's consent to the Nation's jurisdiction to grant such a license.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

**Section 103. Definitions**

When the words listed in this section appear in this title, they shall have the following meaning unless a different meaning is clearly intended.

(a) "Adult" means any person who is either eighteen (18) years of age or older, married, or emancipated.

- (b) “Agency” means the Seminole Nation Child Support Enforcement Agency.
- (c) “Alleged Father” means any man who might be the biological father of a child, including men who are “presumed fathers” under Section 130(d).
- (d) “Child” means a natural child or an adopted child, except that under Subchapter D of this Chapter/Title, Paternity, “child” refers only to a natural child.
- (e) “Child Support Obligation” means the total dollar amount of child support, including payment of work-related day care expenses and the child's share of health insurance, that the paying party is obliged to pay to meet his or her current financial duty to support his or her child. It also includes any non-cash services or resources the party is required to provide.
- (f) “Court” means the Seminole Nation District Court.
- (g) “Domicile” means permanent home. Home is the location where a person has family, community, cultural, ancestral and historical ties and the place to which a person intends to return.
- (h) “Extended Family” does not have a precise definition. Under Seminole custom, there are formal and informal ties which bind the community. Extended family ties are based on blood lines, marriage, friendship, and caring regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, in-laws, and step relations are all extended family, any member of the Nation who is reliable, responsible, loving and willing to care for a child may be considered extended family.
- (i) “Guidelines” mean the Seminole Nation Child Support Guidelines.
- (j) “Indian Tribe” means any Tribe, band, nation, or Alaska Native group recognized by the Secretary of the Interior as eligible for services provided to Indians.
- (k) “Nation” means the Seminole Nation.
- (l) “Parent” includes biological or adoptive parent, but does not include persons whose parental rights have been terminated. It does not include an unwed father who has not acknowledged or established paternity in one the following ways: being identified as the father on the child's birth certificate, by acknowledging paternity to the Office of Tribal Enrollment or to a court, or through formal paternity proceedings under state or Nation law.
- (m) “Schedule” means the Seminole Nation Child Support Schedule.
- (n) “Spokesperson” means a person authorized to speak on behalf of a Seminole person for a specific hearing in Court.
- (o) “TANF” means Temporary Assistance for Needy Families Program.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC

Title 21, § 203; renumbered from section 304 on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter A created from existing sections in this Title on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER B MARRIAGE AND ANNULMENT**

### **Section 104. Marriage is a Contract**

Marriage under this law is a civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 105. Who may Contract: Marriageable Age**

- (a) Any person who has attained the age of 18 years may marry if otherwise competent.
- (b) Any person between the age of 16 and 18 may marry with the written consent of the person's parents, legal guardian or custodian.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 106. Who may not Contract: Invalid or Prohibited Marriages**

- (a) No marriages shall be contracted while either of the parties is lawfully married to another person.
- (b) Persons closer in relationships than fourth cousins may not marry.
- (c) Persons may not marry where there exists a lawful objection or insurmountable impediment as perceived by the District Court, including but not limited to marring within a tradition clan or other traditional prohibition against marriage.
- (d) A marriage may not be contracted if either party is not capable of understanding what it means to agree to become married.
- (e) No person who is or has been a party to an action for divorce in any court may marry again until six (6) months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six (6) months from the date of the granting of judgment of divorce shall be void.

- (f) Person of the same gender will not be allowed to marry or divorce.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 107. Identification of Parties**

(a) A person under the age of 30 must present proof of age by presenting a certified copy of his or her birth certificate or enrollment card.

(b) Each party to the marriage must present satisfactory documentary proof of identification and residence.

(c) Each party to the marriage must present satisfactory copies of documents providing proof that they are free to marry, such as proof of death of previous spouses or proof of divorce or annulment of previous marriages.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 108. Marriage License**

A marriage license shall be issued by the Seminole Nation District Court upon receiving a completed application form from unmarried persons and in the absence of any showing that the proposed marriage would be invalid under any provisions of this Title.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 109. Fee**

A fee shall be for the issuance of marriage licenses is \$40.00.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 110. Solemnization of Marriage Contract**

A marriage shall be validly solemnized and contracted by a Seminole Nation District Court Judge or Supreme Court Justice, in the presence of at least two competent adult witnesses, after the issuance of license and by the mutual declarations of the two parties involved that they agree to become husband and wife.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 111. Common Law Marriage**

Seminole Nation law recognizes marital cohabitation between a male and female who have resided together for at least seven (7) years or more and shall enjoy the same legal treatment as partners who formalized their marital relationship under Section 110.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 112. Grounds for Annulment or Voidable Marriage**

(a) A marriage may be voided or annulled by the District Court for any one of the following reasons upon the application of one of the parties to marriage:

- (1) When either party to the marriage was incapable of consenting thereto.
- (2) When the consent was obtained by force or fraud.
- (3) When either party was, at the time of the marriage, incapable of consummating the marriage and the incapacity is continuing.
- (4) When the marriage was invalid on one of the grounds set forth in Section 106.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 113. Delivery and Filing of Marriage Certificate**

The marriage document, legibly and completely filled out in ink shall be returned by the Officiating person or by the parties to the marriage contract to the Seminole Nation District Court within 10 days after the date of marriage.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter B created on September 1, 2016 from sections of this Title formerly numbered 103-112 and such sections renumbered according to new placement in Title pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER C DIVORCE AND CUSTODY**

### **Section 114. Authority**

Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, Titles, resolution, and statutes.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

### **Section 115. Purpose and Construction**

The Seminole Nation District Court is authorized to dissolve a marriage by divorce when the parties are incompatible for any reason when either party is a resident of the Seminole Nation for at least six (6) months or is a member of the Seminole Nation who has resided within the State of Oklahoma for at least six (6) months.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

### **Section 116. Petition and Response**

(a) Except as otherwise provided, in a dissolution of marriage action the petition shall state:

- (1) The name and birth date of the parties, the social security numbers of the husband and wife and their occupations, the date and place of marriage and the facts relating to the residence of both parties.
- (2) The name and birth date of each minor child of the parties and each other child born to the wife during the marriage, and whether the wife is pregnant.
- (3) That the marriage is irretrievably broken or that the parties agree it is irretrievably broken.
- (4) Whether or not an action for divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge, in the State of Oklahoma, in another tribal court, or elsewhere.
- (5) Whether the parties have entered into any written agreement as to support, legal custody and physical placement of the children, maintenance of either party and property division; and if so, the written agreement shall be attached.

- (6) The relief requested.
- (7) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either party.
- (8) That during the pendency of the action, without the consent of the other party or an order from the court, the parties are prohibited from, and may be held in contempt of court for, encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.
- (9) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, doing any of the following without the consent of the other party or an order of the court:
  - (A) Establishing a residence with a minor child of the parties outside the State of Oklahoma or more than 150 miles from the residence of the other party within the state.
  - (B) Removing a minor child of the parties from the State of Oklahoma without consent of custodial parent.

(b) Either or both parties to the marriage may initiate the action. The party initiating the action or his or her attorneys or advocates shall sign the petition. Both parties or their respective attorneys or advocates shall sign a joint petition if the parties are filing together.

(c) The summons shall be in the form of a regular summons used by the District Court for civil cases.

(d) Service shall be made in accordance with regular court procedures. If only one party initiates the action, the other party may serve a response and/or counterclaim within 20 business days after the date of service.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 117. Prohibited Acts During the Pendency of Divorce**

(a) In an action for divorce, the petitioner upon filing the petition, the joint petitioners upon filing the joint petition and the respondent upon service of the petition are prohibited from doing any of the following:



- (1) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.
- (2) Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.
- (3) Without the consent of the other party or an order of the court, establishing a residence with a minor child of the parties outside the State of Oklahoma or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the State Oklahoma for more than 90 consecutive days.

(b) The prohibitions listed in this section shall apply until the action is dismissed, until a final judgment in the action is entered or until the court orders otherwise.

(c) Any person violating the provisions of this section will be subject to the regular contempt provision in the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 118. Judgment of Divorce**

- (a) The District Court shall grant a judgment of divorce if:
- (1) The requirements of this Title as to marriage counseling have been complied with and the court finds that the marriage is irretrievably broken under Section 119. This is not required if the parties have been living separately for 12 months or longer or if the court otherwise waives the marriage counseling requirement.
  - (2) To the extent it has jurisdiction to do so, the court has considered, approved, or made provision under Section 121 for legal custody and physical placement of any minor children of the marriage, the support of any child of the marriage entitled to support, the maintenance of either spouse, the support of the family and the disposition of property.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 119. Irretrievable Breakdown**

(a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or if the parties voluntarily lived apart continuously for twelve (12) months or more immediately prior to commencement of the divorce action and one party had so stated, the court, after hearing, shall make a finding that the marriage is irretrievably broken.

(b) If the parties have not voluntarily lived apart for at least twelve (12) months immediately prior to commencement of the action and if only one party had stated under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation.

(1) If the court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken; or

(2) If the court finds that there is a reasonable prospect of reconciliation, it shall continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party or on its own motion, may order counseling. At the adjourned hearing, if either party states under oath or affirmation that the marriage is irretrievably broken, the court shall make a finding that the marriage is irretrievably broken.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 120. Actions of the Court Pending Divorce**

(a) The District Court may order:

(1) The husband and wife to provide for the separate maintenance of his or her spouse and children as the court may deem just upon application therefore or in the disposition of a divorce proceeding.

(2) The care, custody and maintenance of the minor child of the marriage during the pendency of the proceedings.

(3) The restraint of either spouse from, in any manner, molesting or interfering with the other or the minor children.

(4) The restraint and enjoining of either spouse or both from disposing of their individually or jointly owned property during the pendency of the action except as approved by the court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 121. Provision for Judgment**

(a) In addition to voiding or dissolving the marriage, the court shall have the power to impose judgment as follows:

- (1) Custody.
  - (A) For the future legal custody and physical placement and care of the minor children of the marriage as may be in the best interest of the children and in accordance with Section 122.
  - (B) Approve any agreement between the parties as to the legal custody and physical placement and care of minor children if deemed by the court to be in the best interests of the children.
- (2) For the recovery from either spouse, to allow for the care and support of the minor children, an amount of money as may be just and proper for the party to contribute toward their education and support.
- (3) For the recovery from either spouse, an amount of money or other personal property as may be just and proper for the maintenance of the other.
  - (A) In considering an order under this subsection, the court shall consider the following:
    - (i) The length of marriage.
    - (ii) The age and physical and emotional health of the parties.
    - (iii) The division of property made under paragraph (4), below.
    - (iv) The education level of each party at the time of marriage and at the time the action is commenced.
    - (v) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
    - (vi) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably

comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

- (vii) The tax consequences to each party.
  - (viii) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
  - (ix) The contribution by one party to the education, training or increased earning power of the other.
  - (x) Such other factors as the court may in each individual case determine to be relevant.
- (4) Property Division. For the approval of any property settlement between the parties or recovery and delivery to each of the parties any of their personal property in the possession or control of the other at the time of the giving of the judgment.
- (A) Except as provided in paragraph (B), below, any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this paragraph:
    - (i) A gift from a person other than the other party.
    - (ii) By reason of the death of another, including, but not limited to life insurance proceeds; payments made under a deferred employment benefit plan, of an individual retirement account; a property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer in death arrangement.
    - (iii) With funds acquired in a manner under paragraphs (i) or (ii), above.
    - (iv) A per capita or other payment received by a party other than the spouse.
  - (B) The court shall presume that all property not described in paragraph (A), above, is to be equally divided between the parties,

but may alter this distribution without regard to marital misconduct after considering all of the following:

- (i) The length of the marriage.
  - (ii) The property brought to the marriage by each party.
  - (iii) Whether one party has substantial assets not subject to division by the court.
  - (iv) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
  - (v) The age and physical and emotional health of the parties.
  - (vi) The contribution by one party to the education, training or increased earning power of the other.
  - (vii) The earning capacity of the party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
  - (viii) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.
  - (ix) The tax consequences to each party.
  - (x) Any written agreement made by the parties before or during the marriage concerning any arrangements for property distribution; such agreements shall be binding upon the parties.
- (5) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action.
- (6) In an order for physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC

Title 21, § 203; subsection numbering scheme modified on September 1, 2016  
pursuant to authority granted by SNC Title 21, § 203.]

**Section 122. Revision of Legal Custody and Physical Placement Order**

The following provisions are applicable to modifications of legal custody and physical placement orders:

- (a) Substantial Modifications.
  - (1) Within Two Years after Initial Order. Except as provided under paragraph (b), below, a court may not modify any of the following orders before two years after the initial order is entered, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:
    - (A) An order of legal custody.
    - (B) An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.
  - (2) After 2-Year Period.
    - (A) Except as provided under paragraph (1), above, and paragraph (b), below, upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the Court finds all the other following:
      - (i) The modification is in the best interest of the child.
      - (ii) There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.
    - (B) There is a rebuttable presumption that:
      - (i) Continuing the current allocation of decision-making under a legal custody order is in the best interest of the child.
      - (ii) Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

- (C) A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under this subsection.

(b) Modification of Substantially Equal Physical Placement Orders.

Notwithstanding paragraph (a) above,

- (1) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child.
- (2) In any case in which paragraph (1) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion or order to show cause of a party may modify such an order based on the appropriate standard under paragraph (a) above. However, there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

(c) Modifications of Other Physical Placement Order. Except as provided under paragraphs (a) and (b), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the Court finds that the modification is in the best interest of the child.

(d) Reasons for Modification. If either party opposes modification or termination of a legal custody or physical placement order under this section, the Court shall state, in writing, its reasons or the modification or termination.

(e) Notice. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(f) Transfer to Social Services. The Court may order custody transferred to the Department of Social Services only if that department agrees to accept custody based on Title 19, the Seminole Nation Juvenile Code.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 123. Effect of Judgment**

(a) In any action affecting the family under this Title, if the court orders maintenance payment or other allowances for a party or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable in accordance with the Seminole Nation Child Support Enforcement Code, Subchapter E of this Chapter, until such judgment is complied with.

(b) The Court has the power to vacate or modify the judgment on sufficient cause shown upon its own motion, or upon the application of both parties to the action, at any time within six (6) months from the granting of such judgment. If the judgment is vacated it shall restore the parties to the marital relation that existed before the granting of such judgment.

(c) When a judgment of divorce is granted it shall be effective immediately.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 124. Visitation Rights of Certain Persons**

Upon petition by a grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child, the Court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the Court determined that visitation is in the best interest of the child. Whenever possible, in making a determination under this section, the Court shall consider the wishes of the child.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 125. Fees**

The filing fee for a petition for dissolution of marriage shall be set by the Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Two Subchapter B and all sections within renumbered according to new placement in Chapter One Subchapter C on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **SUBCHAPTER D PATERNITY**

### **Section 126. General**

This Subchapter provides a process for the Court to establish the paternity of a child.

(a) In the Seminole Nation, fathers are important role models who teach respect, values, and responsibilities to their children. They care for their children, show them love and point them in the right direction. They support their children in having a safe, secure, healthy, spiritual, happy home life as well as supporting them financially.

(b) The Nation recognizes that determining biological paternity is important for purposes of tribal membership and the benefits associated with it. This Subchapter is not intended to take the place of or interfere with confidential acknowledgments of paternity through the Seminole Nation Office of Tribal Enrollment.

(c) A paternity proceeding under this chapter may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother.

(d) The provisions of this chapter may be applied, as far as practicable, to the determination of the existence or nonexistence of a mother and child relationship.

(e) Confidentiality of Paternity Records. The records filed in a paternity action shall be sealed. Only parties to the case may obtain copies.

(f) No Statute of Limitations. An action to establish paternity shall not be subject to a statute of limitations.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

### **Section 127. Foreign Paternity Orders and Affidavits**

(a) A court paternity order from another jurisdiction which established paternity will only be recognized by the Seminole Nation District Court if it meets the requirements of Section 171. Paternity orders entered by default shall not be recognized.

(b) The Court shall not recognize a state affidavit of paternity if:

- (1) It was signed by a minor who did not understand the consequences of signing the affidavit; or
- (2) There is evidence of duress, mistake, or unfair procedure.

(c) A petition for establishment of paternity may be filed in the Seminole Nation District Court even if a state paternity affidavit has been signed or an order regarding paternity has been issued by another court when the petitioner believes that the other process was unfair.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 128. Paternity Petitions**

(a) Who May File. A petition requesting the Court to establish paternity may be filed by any of the following.

- (1) A child (including an adult “child”), or if the child is under the age of 18, the child's legal guardian.
- (2) The child's natural mother.
- (3) An alleged father of the child.
- (4) The Seminole Nation Enrollment Committee, when it has reason to believe that the child's birth certificate or affidavit of paternity is irregular or unreliable.

(b) Contents. A petition to establish paternity, prepared on a form approved by the Court, shall state the following information.

- (1) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation or support of the child, and of the petitioner.
- (2) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation and divorce, if any.
- (3) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child.
- (4) Whether there have been any other court or administrative paternity proceedings or state paternity affidavits concerning the child, and whether there have been any termination of parental rights or adoption proceedings.
- (5) A certified copy of the child's birth certificate shall be attached to the petition.
- (6) Whether or not a name change for the child is requested.

(c) Service of Summons. The natural mother, the child's legal guardian, the adult child, and each man alleged to be the natural father shall be served with a summons and the petition in accordance with Section 167(a) and be notified of all hearings in accordance with Section 168 and provided the opportunity to respond.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 129. Genetic Test**

(a) The Court may, or at the request of a party shall, require the child, mother and alleged father(s) to submit to genetic tests. An alleged father may be excused from the requirement of genetic tests if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.

(b) The following requirements apply to genetic testing under this section.

- (1) The tests shall be performed by an accredited paternity genetic testing lab, approved by the Nation that performs legally and medically acceptable tests.
- (2) The mother shall notify the genetic testing laboratory if she and any of the alleged fathers have a common ancestor or if there is another possible father who is closely related to the alleged father.
- (3) The party receiving the copy of the genetic test results from the expert shall file them with the Court who shall send all parties a copy of the test results by certified mail, return receipt requested.
- (4) Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.
- (5) The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.
- (6) Failure to submit to genetic tests when required by the Court may constitute contempt of court.

(c) Good Cause Not to Reveal Father's Identity. A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to the following.

- (1) Cases involving domestic violence.
- (2) Cases involving incest or rape.
- (3) Cases where identification of the father is not in the best interest of child.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 130. Paternity Hearings**

(a) The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the hearing.

(b) The following rules apply to paternity hearings.

- (1) Paternity hearings shall be closed unless all parties agree otherwise.
- (2) The mother of the child and the alleged father(s) may be compelled to testify at the paternity hearing.
- (3) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence at the paternity hearing.
- (4) If the Petition contains a request that the child's name be changed, the Court shall hear testimony on this issue.
- (5) The parties shall provide testimony on how the costs of paternity testing shall be paid. If the testing was paid by the Nation, it may waive all or part of the costs or request reimbursement.

(c) Evidence and Burden of Proof.

- (1) The burden of proof shall be the same as that applied to civil actions before the Seminole Nation District Court (clear and convincing).
- (2) The Court may consider the following types of evidence in paternity cases.
  - (A) Genetic test results.
  - (B) Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception.
  - (C) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy.

- (D) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts.
- (E) Reputation in the community as to paternity.
- (F) Any other reliable evidence which is relevant to the issue of paternity of the child, except that confidential Seminole Nation enrollment affidavits of paternity shall only be admissible when offered by the man who signed the affidavit. If the father is deceased, the Enrollment Committee may file a confidential enrollment affidavit of paternity with the Court if the Committee, in its sole discretion, deems it to be in the child's best interest.

(d) Presumptions. The following are conclusive presumptions in paternity cases that can be overcome only by clear and convincing evidence.

- (1) Presumption as to Whether a Child is Marital or Non-Marital. Genetic testing which establishes a ninety-nine percent (99%) or greater probability of paternity.
- (2) Presumption of Paternity Based on Acknowledgment. A man is presumed to be the natural father of a child if he and the mother have acknowledged, by affidavit, paternity and no other man is presumed to be the father.
- (3) Presumption as to Time of Conception. In any paternity proceeding, in the absence of a valid birth certificate indicating the birth weight, the mother shall be competent to testify as to the birth weight of the child whose paternity is at issue, and where the child whose paternity is at issue weighed 5 1/2 pounds or more at the time of its birth, the testimony of the mother as to the weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the Court. The conception of the child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the Court.
- (4) Presumption of Paternity Based on Marriage of the Parties.
  - (A) A man is presumed to be the natural father of a child if any of the following applies:
    - (i) He and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.

- (ii) He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child under paragraph (i), above.

- (B) In a legal action or proceeding, a presumption under paragraph (A) is rebutted by results of a genetic test that show that a man other than the man presumed to be the father under paragraph (A) is not excluded as the father of the child and that the statistical probability of the man's parentage is 99.0% or higher, even if the man presumed to be the father under paragraph (A) is unavailable to submit to genetic tests.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 131. Paternity Orders**

- (a) Default Orders.

- (1) Paternity orders entered by default are against the public policy of the Seminole Nation.
- (2) Reimbursement of Child Support Paid Erroneously. When a man has paid child support as the father of a child and the paternity of a different man is established later by the Court based on genetic testing, the Court may order reimbursement of the child support that was paid erroneously only if:
  - (A) The child support payments were retained by a state or tribal government under a permanent assignment of public assistance benefits;
  - (B) Notice of the hearing has been served on the appropriate government agency;
  - (C) The government agency that received and retained the payment is the party ordered to make the reimbursement; and
  - (D) Reimbursement extends back to the date the man can prove he attempted to contest the child support obligation or eighteen months, whichever is longer.

- (b) Agreed Paternity Order.

- (1) The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall hold an in-chambers, ex-parte discussion individually with each party to:
    - (A) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;
    - (B) Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
    - (C) Explain the person's right to a spokesperson, lay advocate, or attorney;
    - (D) Explain the burden of proof as to each issue; and
    - (E) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.
  - (2) The in-chambers conversation need not be recorded. If the party wants a friend, family member or other person to be present, the judge shall allow it after first speaking alone with the party. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.
- (c) Proceedings Involving another Jurisdiction.
- (1) If the Court cannot obtain personal jurisdiction over the natural mother or an alleged father and finds that it cannot make a determination of paternity without that person, the Court may take any of the following actions.
    - (A) Request the Agency to have another tribe or state require the person to submit to genetic tests performed by an expert in paternity genetic testing.
    - (B) Request a tribunal of another tribe or state to require the person to respond to an order by the Court the person to submit to genetic tests performed by an expert in paternity genetic testing.
    - (C) Forward the case to a tribunal of another tribe or state for the sole purpose of determining paternity.
  - (2) The Court shall retain exclusive, continuing jurisdiction over the case for custody, visitation, child support and all other issues to the fullest extent permissible under applicable law.

- (3) Temporary Orders. Pending determination of the paternity issue, the Court may make a temporary order regarding custody and support of the child.
- (d) Final Paternity Order.
  - (1) The decision of the Court shall be final for purposes of appeal under the Seminole Nation Rules of Appellate Procedure.
  - (2) The order determining the existence or nonexistence of the parent-child relationship shall be effective for all purposes. The Court shall provide the Office of Tribal Enrollment with a copy of the paternity order if necessary. A paternity order may be accompanied by any order, temporary or final, authorized by the provisions of the applicable chapter.
  - (3) Name Change, Amended Birth Certificate.
    - (A) The Court may authorize that the child's name be changed.
    - (B) If the finding of paternity or the child's new name varies from the child's birth certificate, the Court shall order that an amended birth certificate be issued.
- (e) Disestablishment of Paternity. As a matter of policy, the Seminole Nation discourages the disestablishment of paternity.
  - (1) The proceedings in this Subchapter may be used to disestablish paternity. The limits on who may file an action as stated in Section 128(a) apply to disestablishment proceedings.
  - (2) The Court shall require the party challenging a paternity which has been legally acknowledged to show that it is in the best interests of the child to change the status quo, prior to Court orders or permits genetic testing. Except, that if it is the Seminole Nation Committee on Tribal Enrollment that is the party challenging a paternity that has been legally acknowledged, the Committee must show it is in the best interest of the Tribe to change the status quo.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Three Subchapter E and all sections within renumbered according to new placement in Chapter One Subchapter D on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **SUBCHAPTER E**

### **CHILD SUPPORT; ENFORCEMENT**

#### **Section 132. Authority**

The Seminole Nation General Council authorizes and requires the enforcement and collection of child support on behalf of Seminole children pursuant to this code.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

#### **Section 133. General**

Seminole Nation parents have a responsibility for caring for their children, bonding with them, making sure they are safe, and providing for all their basic needs. Aunts, uncles, grandparents and other extended family members help parents and their children when they need help by advising the parents in decision-making, showing love to the children, teaching values and respect, and taking over in parents' absence. Grandparents share with their grandchildren the wisdom of their experience and traditional values. The Seminole Nation District Court is the most appropriate forum for deciding issues related to the well-being of a child who is a member of a Seminole Nation family. It is the policy of the Seminole Nation to consider carefully the circumstances of each family and to treat each family individually.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

#### **Section 134. Policy**

(a) The Seminole Nation implements this Child Support Enforcement Code by establishing a Child Support Enforcement Agency (Agency) or the Seminole Nation may contract for such services, or both.

(b) The Seminole Nation shall promote cooperation and agreement by the parents regarding fulfillment of their duties to their children. It is the experience of the Seminole Nation that a non-custodial parent is more likely to remain connected with his or her children if he or she has developed an agreement with the other parent on the amount of child support.

(c) The Nation shall not interfere in child support arrangements agreed upon by families when those agreements serve the best interests of the child.

(d) The Seminole Nation Child Support Enforcement Agency is authorized to certify that there is good cause not to establish paternity or child support in cases in which it is not in the best interests of the child to do so.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 135. Duty of Care and Support**

(a) Parents have a duty to care for their children. This applies to all natural parents whose parental rights have not been terminated and to all adoptive parents. This duty includes providing love, guidance, education, a safe and healthy environment and financial support. Parents also have a duty to ensure that Seminole children have an opportunity to learn about and participate in the Seminole Way. This includes access to Seminole family and participation in Seminole Nation events.

(b) The purpose of this chapter is to provide a process that ensures that the basic financial needs of children are met when their parents do not live together. In the Seminole Nation, children are cared for by parents, extended family and the community. This chapter focuses on parents' financial duty to their children.

(c) Stepparents do not have a legal duty to support stepchildren but may have a moral and traditional duty to contribute to their support.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 136. Child Support Enforcement Agency**

The Agency operates on a child-centered, agreement-based process. The Agency shall perform the following responsibilities:

(a) Ensure that assistance is made available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court.

(b) Prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Agency. In making its recommendation, the Agency shall be guided by the Child Support Guidelines (Guidelines) (Section 335) and the Seminole Nation Child Support Schedule (Schedule) (Section 336). The Agency's recommendation shall be filed with the petition whenever possible; and

(c) May represent the interests of the child in child support enforcement proceedings, as provided in Section 331(b)(1).

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 137. Child/Family Protection Petition and Guardianship Cases**

This Subchapter may serve as a guide for establishment of child support in Child/Family Protection Petition and Guardianship cases.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 138. Petition for Child Support**

- (a) Who May File.
  - (1) A parent may file a petition for establishment of child support under this Subchapter. The petition shall be prepared on a form approved by the Court. The child support petition may be filed as a separate proceeding or in connection with any of the following petitions.
    - (A) Divorce or invalidity of marriage.
    - (B) Paternity.
    - (C) Child custody.
- (b) Contents. A petition for establishment of child support shall contain all of the following:
  - (1) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party and the child for whom support is requested.
  - (2) The child support obligation requested or agreed upon.
  - (3) The proposed provision of health insurance for the child.
  - (4) Any proposed work-related day care or extraordinary medical expenses.
  - (5) The date proposed for the child support obligation to begin and when it is proposed to terminate.
  - (6) The proposed frequency of payment.
  - (7) A statement whether child support payments should be made by wage withholding and per capita distribution, or by direct payment, and to whom payments should be made if not the Agency.
  - (8) A proposed Parenting Plan (See Section 108, Title 43, Oklahoma Statutes, for guidelines for preparing a Parenting Plan), if any, or, if custody is shared, the percentage of a year that each parent has physical custody of the child.

- (9) A statement that the petitioner swears that he or she believes that the male party is the father of the child; or a statement that the parties agree that the male party is the father of the child.
- (10) A statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name and place of the Court or agency.
  - (A) Child custody proceeding.
  - (B) Child support proceeding.
  - (C) Paternity establishment or disestablishment proceeding.
  - (D) Proceeding requesting a domestic violence protective order or no-contact order.
  - (E) Proceeding requesting a restraining order involving the child or a party.
- (11) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance.
- (12) Financial information, as provided in Section 325(e).
- (13) Authorization for the release of all financial records to the Seminole Nation Court and the Agency.
- (14) A statement of which parent should be allowed to claim the child as a dependent for income tax purposes.
- (15) The recommendation of the Agency regarding child support and health insurance coverage.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 139. Documents and Notice to Child Support Agency**

The Court shall provide the Agency with a copy of the petition, response, financial information and all other documents filed in a child support case and it shall provide the Agency with notice of all hearings in a child support case.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 140. Initial Child Support Hearing**

(a) When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was received, unless continued for good cause.

(b) Notice of Hearing. The date, time and place of the initial hearing shall be contained in the Summons. Notice of the hearing shall be served on the parties and the Agency.

(c) Service of Child Support Petition and Summons.

(1) After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition on a form approved by the Court. The Court must cause the respondent to be served with a summons indicating the hearing date.

(2) The petition and summons shall be served as provided in Section 308(a).

(3) The parties may both sign a petition so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

(4) Summons.

(i) Content. The summons prepared on a form approved by the Court shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within sixty (60) days of the date of publication, if service is by publication, the Court may proceed without the respondent and a default judgment may be entered without his or her participation

(5) Service.

(i) The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent the certification shall state the name of the person served, the date and place of service, and the instructions given.

- (ii) In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

(6) Response

- (1) Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The response shall include financial information as provided in Section 324(e) and authorization for the release of all financial records to the Seminole Nation Child Support Enforcement Agency and the Seminole Nation Court. The respondent may also file a proposed Parenting Plan.

- (2) The respondent shall cause the response, including financial information, to be served on the petitioner as provided in Section 307(d).

(3) Paternity at Issue.

- (A) If the respondent disagrees or is unsure that he is the father of the child, he shall state this fact in his response.

- (B) If the parties do not agree about paternity, either party may request that paternity be established. Upon the request of either party, the Court shall continue the child support proceeding pending establishment of paternity, as provided in Subchapter C. If the parties do not agree about paternity and neither party requests paternity establishment, the Court shall dismiss the child support petition.

(d) Financial Disclosure.

- (1) The parties shall provide complete disclosure of financial information, including verification of all income and resources, to the Court and to the Agency.

- (2) Financial information shall be provided on forms approved by the Court. It shall be submitted with the petition or response.

- (3) Penalty. Failure to provide required financial disclosure may be grounds for contempt of court.

- (4) Financial Disclosure Confidentiality. Financial information filed with the

Court or provided to the Agency and information shall be confidential and available only to the parties, the Court and the Agency, and solely for the purpose of establishing paternity, or establishing, modifying, enforcing or distributing child support.

- (5) A party is not required to provide his or her financial information as part of the Court record, provided the party has made full and complete financial disclosure to the Agency and that the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.

(e) Limited Statutory Waiver of Confidentiality. The following entities are authorized and required to provide information regarding a party's income, resources and address to the Agency:

- (1) Departments of the Seminole Nation.
- (2) Seminole Nation Housing and Community Development Agency.
- (3) Tribal enterprises.
- (4) Any person or entity doing business on lands under the jurisdiction of the Seminole Nation.
- (5) Any Temporary Aid to Needy Families (TANF) Program, which shall also provide the following information about a party's TANF assistance:
  - (A) Whether the person receives or has ever received TANF assistance.
  - (B) The names of other people on the person's TANF grant.
  - (C) The dates of the assistance.
  - (D) The amount of assistance.

(f) Domestic Violence Victim Protection.

- (1) The Agency is authorized to request information from off-reservation employers, government agencies and other entities.
- (2) The Agency and the Court shall take whatever steps are necessary to ensure that the address or location of a victim of domestic violence is kept confidential.

(g) Conduct of the Hearing.

- (1) Who May Attend. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this Subchapter.

Any Seminole person appearing in the Court shall have the right, at his own expense, to a spokesperson, lay advocate, or attorney, as allowed under Seminole Nation Rules of Civil Procedure, or to proceed pro se. Any other person shall have the right to an attorney at his own expense or may proceed pro se. The Agency staff may be present at child support hearings. If a party wants a friend, family member or other person to be present, the Court may allow it.

- (2) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.
- (3) If an Agency staff person is not available, the Court may either base its decision on the Agency's written recommendation or issue a temporary order and continue the case until Agency staff is available for a hearing. The temporary order terminates when the final order is entered or when the petition is dismissed.
- (4) If a party believes the Agency's recommendation or the Child Support Schedule (Section 336) is inappropriate as applied to him or her, the burden of proof shall rest on that party to prove that the support obligation should be different than the recommendation or the Schedule.
- (5) The Court may continue the case at any point pending referral of the parties to the Agency, if appropriate.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 141. Proposed Agreed Orders**

- (a) General.
  - (1) The parties may agree to a proposed order which resolves some or all of the issues regarding establishment or modification of the child support obligation. The parties may agree that the male party is the father of the child.
  - (2) The parties may request the Agency to assist them to develop an agreed order.
  - (3) A proposed agreed order shall be filed with the Court at or prior to the hearing.
- (b) Hearing for Proposed Agreed Order.



- (1) The Court shall approve a complete agreed order if the Agency does not object, the Court has reason to believe the agreement was truly voluntary, and the agreed order contains all the provisions required by Sections 328 and 329.
- (2) Temporary Order. If the agreed order addresses some but not all of the required issues, the Court may approve the partial agreement and, if sufficient information is available, consider the remaining issues. If a complete order cannot be issued with the information available, the case shall be continued. The parties may be ordered to meet with the Agency, if appropriate. The Court shall establish a time frame for the filing of the remainder of each party's proposal and the Agency's additional recommendation. The Court may enter a temporary order based on the Seminole Nation Child Support Guidelines (Section 151) and the Schedule. The case will then proceed to a hearing on the remaining issues. The temporary order terminates when the final order is entered or when the petition is dismissed.
- (3) The Court may hold in-chambers, ex parte discussions with each party to ensure that they understand the proposed agreed order and to assure that each party's consent to the proposed agreement was not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person. If a party wants a friend, family member, or other person to be present, the Court shall allow it after first speaking alone with the party.
- (4) If the Court finds that the agreement was not truly voluntary, the case shall be continued and the parties shall be ordered to meet separately with the Agency. The Court shall establish a time frame for the filing of each party's proposal and the Agency's recommendation. The Court may enter a temporary order based on the Guidelines and Schedule. The case will then proceed to a full hearing on the issues. The temporary order terminates when the final order is entered or when the petition is dismissed.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 142. Establishment of Child Support Obligation**

The Court shall establish the child support obligation, including providing for health insurance, as follows:

- (a) If the parties have proposed a complete agreed order and the Agency has not objected, the Court shall enter the agreed order.

(b) If the parties have proposed a partial agreed order and the Agency has not objected, the Court may adopt temporary agreed order and, for the remaining issues, it may either:

- (1) Adopt the Agency recommendation, if any; or
- (2) Hear evidence and establish the child support obligation by applying the Guidelines and Schedule to the circumstances of the parties.

(c) If the Court finds reason not to accept all or part of the recommendation of the Agency, or if there is no such recommendation or proposed agreement, the Court shall hear evidence and establish the child support obligation by applying the Guidelines and Schedule to the circumstances of the parties.

(d) When the paying party owes past child support under a previous child support order, the Court shall order an additional amount of child support to be paid each month on the past child support debt. The total monthly amount ordered shall not exceed the upper limit of the Schedule's range for the paying party's income, unless the parties agree.

(e) Regardless of paragraphs (a) through (c), above, the Court shall adopt the method of payment (wage withholding, per capita, or direct payment) requested by the party who will pay child support; except that if evidence is presented that the paying party has a history of non-payment of child support, the Court may order wage withholding or require the party to request his or her employer to withhold wages to pay the required child support.

(f) If a party requests that child support payments be made directly to a parent, the Court shall take testimony on how the parties intend to keep records of the direct payments so that the paying parent is credited with making each payment.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 143. Findings of Fact and Conclusions of Law**

After the hearing, the Court shall enter findings of fact and conclusions of law and a separate child support order. The findings of fact and conclusions of law shall include findings and conclusions regarding:

- (a) The Court's subject matter jurisdiction over the case.
- (b) The Court's personal jurisdiction over all the parties.
- (c) The paternity of the child.
- (d) The child support obligation of one or both parties, as agreed by the parties or, in the absence of agreement, as calculated using a form recommended by the Seminole Nation

Child Support Enforcement Agency and approved by the Court in accordance with the Guidelines and Schedule.

(e) If the child support obligation deviates from the scheduled range for the paying party's income, the amount of support that would have been required and a justification as to why that amount is unjust or inappropriate.

(f) If the child support obligation is based on shared physical custody, the percentage of the year the child resides with each party.

(g) Date the child support obligation begins.

(h) The frequency of child support payments.

(i) If child support is to be established during the period prior to filing the child support petition, the recommendation of the Agency regarding duration and amount of pre-filing child support.

(j) Circumstances under which the child support obligation will terminate.

(k) To whom or to what entity child support payments are to be made.

(l) How records will be kept of child support payments received if payment is not made to the Agency.

(m) How child support payments may be enforced if necessary, and the following information.

(1) Paying party's employer's name and address.

(2) Assets which could be attached if necessary for enforcement.

(3) Whether there is a spouse entitled to protection in case of Federal Income Tax Refund Offset.

(n) Previous child support orders applicable to the paying party or any of the children.

(o) The amount of any previous child support owed.

(p) In default child support cases, facts supporting service of the petition, summons and notice to respondent.

(q) The extent to which the order differs from the recommendation of the Agency.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 144. Child Support Order**

- (a) The child support order shall include the following.
- (b) A statement that the Court has jurisdiction over the case.
- (c) A statement that the Court shall have continuing, exclusive jurisdiction over the welfare of the child, including child support and modification of the order.
- (d) A statement that the male party is the legal father of the child, if the parties so agree and paternity has not been previously established. If paternity has been previously established, the child support order does not need to address paternity. The Nation does not recognize default paternity orders.
- (e) The child support obligation of one or both parties, to include the following.
  - (1) The amount of cash to be paid to the other party.
  - (2) The amount of the cash payment which is allocated to work related day care or health insurance, if any.
  - (3) The amount of non-cash services or resources to be provided to the other party, if any.
  - (4) The amount to be paid to third parties for day care, health insurance or extraordinary expenses, if any.
- (f) The date the child support obligation begins.
- (g) The frequency of child support payments.
- (h) The duration and amount of any pre-filing child support obligation, as provided in Section 151(g)(1).
- (i) A statement regarding the circumstances under which the child support obligation will terminate, as provided in Section 151(g)(2).
- (j) A statement whether child support payments will be made by wage withholding, per capita, or by direct payment to the Agency or other entity, as provided in Section 151(h), and a provision for record keeping if payment is not made to the Agency.
- (k) The amount of any credit against the child support obligation for benefits paid directly to the child, as provided in Section 151(i).
- (l) The amount of past child support owing on a previous child support order, if any, and provision for making payment of that debt, as provided in Section 142(d).
- (m) A statement that each parent shall notify the Agency of any change of employer or change of address within ten (10) days of the change.

(n) The date for a review hearing three (3) months after the order is issued and a statement that thereafter review hearings shall be scheduled every twelve (12) months after the order is issued, as provided in Section 153.

(o) A detailed description of the enforcement actions that may be taken in the event the parent owing child support fails to comply with the order.

(p) The child support order is final for purposes of appeal.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 145. Default Child Support Orders**

(a) When the respondent fails to appear or otherwise defend, the petitioner may file a motion, supported by an affidavit, for a default child support order. The Court does not have the authority to enter a default order of paternity. The Court may enter a default child support order upon finding the following:

- (1) The Court has jurisdiction over the subject matter of the case and over the respondent.
- (2) The respondent was given proper service of the petition and summons and proper notice of the hearing.
- (3) The petitioner has stated, under oath, that he or she believes that the male party is the father of the child.
- (4) The petition or the recommendation of the Agency or the financial information, support establishment of respondent's obligation at the amount provided for in the default judgment. The amount shall be determined under the Guidelines and Schedule based on calculation of income as provided in Section 151(d).

(b) Notice of the default order shall be served on the respondent.

(c) The Court may set aside a default child support order upon a showing of good cause.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 146. Modification of Foreign Court Child Support Orders**

(a) Seminole Nation Child Support Orders.

- (1) When there has been a substantial change in the income of the paying party or other factors that determined the original child support obligation, a party may request, by motion, modification of a Court child support order.
  - (2) A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested.
  - (3) Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:
    - (A) In agreed modification orders no financial information need be filed with the Court; and
    - (B) A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.
  - (4) Child support orders may be modified for future support only. Amounts of past due support shall not be modified except as provided in Section 150.
- (b) Foreign Child Support Orders. See Subchapter F of this Chapter, Recognition of Foreign Child Support Orders.
- (c) Foreign Child Support Administrative Orders.
- (1) A child support order of the Seminole Nation District Court supersedes an administrative order of another nation, state or tribe.
  - (2) If a party wishes to have a Seminole Nation District Court child support order replace a foreign administrative child support order, he or she may file a child support petition including all the information set forth in Section 138, as well as a copy of the foreign administrative order.
  - (3) The Seminole Nation child support order shall address all time periods covered by the foreign administrative order.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 147. Enforcement of Child Support Orders**

- (a) The Court may enforce a child support order by ordering wage withholding or other means of enforcement at the following hearings:

- (1) An enforcement hearing if a child support obligation is at least thirty (30) days overdue in an amount equal to one month's child support obligation or if there is a history of non-compliance; or
  - (2) A regularly scheduled review hearing if child support is overdue at the time of the review hearing or if there is a history of noncompliance with the order.
- (b) Enforcement Hearings.
  - (1) Filing. A motion for an enforcement hearing may be filed only by either:
    - (A) A parent; or
    - (B) The Agency, representing the interests of the child in receiving child support, in any case involving another tribe or state or the Seminole Nation Indian Child Welfare Program.
  - (2) Affidavit. The motion shall be supported by an affidavit containing the following:
    - (A) Terms of the child support order to be enforced.
    - (B) Length of time the child support obligation has been overdue, which must be at least 30 days or facts supporting a history of non-compliance.
    - (C) Amount of child support that is overdue, which must be equal to one month's child support obligation.
  - (3) Agency Recommendation. The Agency shall file a recommendation regarding appropriate enforcement action in every case filed by a parent. In a case filed by the Agency, the recommendation shall be included in the Agency's motion for the enforcement hearing.
  - (4) Hearing Notice. The notice for the enforcement hearing shall be served as provided in Sections 168(b), 169 and 139, and shall contain the following information.
    - (A) Copy of the motion and affidavit.
    - (B) The time and date of the hearing.
    - (C) Notice that if the parent owing support fails to attend the hearing, wage withholding or other enforcement action will be ordered.
  - (5) Procedures. At the enforcement hearing the Court shall review the affidavit and any supporting documents, hear the testimony of each party,

consider any other evidence presented, and consider and give great weight to the recommendation of the Agency, if any.

(6) Burden of Proof.

- (A) If the moving party meets the burden of proving that the child support obligation is at least 30 days overdue in an amount equal to one month's child support obligation or that the party has a history of non-compliance, the Court shall order wage withholding, as provided in Section 147(c), or other means of enforcement, as provided in Section 147(d).
- (B) If the moving party does not meet the burden of proof, the Court shall dismiss the motion.

(c) Wage Withholding.

- (1) At a review hearing or at an enforcement hearing, wage withholding shall be the primary means of enforcement of a child support order where a parent receives wages, unless:
  - (A) The parties agree in writing to alternate arrangements which the Court approves;
  - (B) The party owing child support works for a Tribe or a tribal enterprise that has not waived its sovereign immunity for that purpose, in which case the Court shall order that party to arrange wage withholding of child support with his or her employer;
  - (C) The parent owing child support demonstrates good cause not to require immediate wage withholding; or
  - (D) The Court finds that another means of enforcement would be more effective.
- (2) Wage Withholding Order or Request. All garnishments must comply with the Nation's civil procedure requirements and may provide for the following as long as not inconsistent with the Nation's Civil Procedure Code:
  - (A) A wage withholding order shall not exceed the upper limit of the Seminole Nation Child Support Schedule's range for the paying party's income, unless the parties agree. The Court shall order that an additional amount be withheld each month to be applied to past payments owed.
  - (B) The wage withholding order or request shall include all of the following:



- (i) The amount to be withheld and the frequency of the withholding.
  - (ii) A requirement that the employer send the amount to the Nation within seven (7) business days of the date the paying party is paid.
  - (iii) A requirement that the employer report to the Agency the date on which the amount was withheld.
  - (iv) A requirement that the employer remit the amount withheld to the Nation until further notice by the Nation.
  - (v) A statement that the employer shall notify the Nation promptly when the paying party terminates employment and provide the paying party's last known address and the name and address of the paying party's new employer, if known.
- (3) Procedure. The Court shall serve the wage withholding order or the party's wage withholding request on the employer or other payer. The Court is authorized to approve wage withholding forms recommended by the Agency.
- (4) Release from Withholding. The wage withholding order or request shall be effective until the Court or the Agency issues a release or authorizes the party to issue a release.
- (5) Employer Obligations.
  - (A) No employer shall refuse to honor a wage withholding order or a party's wage withholding request issued under this chapter. An employer shall begin withholding within seven days after service of the order or request. Failure to withhold wages according to the order or request subjects the employer to liability for the accumulated amount the employer should have withheld.
  - (B) No employer may discharge, refuse to employ or take disciplinary action against any employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section subjects the employer to a fine to be determined under Seminole law.
- (d) Other Means of Child Support Enforcement. At a review hearing or an enforcement hearing, the Court may order any of the following actions in addition to or instead of wage withholding:

- (1) A Federal Income Tax Refund Offset may be obtained by the Agency as provided in Section 147(f)(2).
- (2) Attachment of assets through utilization of the Lien Docket, except that the federal Order to Withhold and Deliver form shall be used where applicable.
- (3) Interception of federal payments, such as retirement, travel or expense reimbursement.
- (4) Appearance to explain non-payment.

(e) Exemptions from Enforcement Actions. In the enforcement of any child support order, the following shall be exempt from execution except as specifically provided as follows:

- (1) Unemployment compensation, TANF benefits, SSI or other Social Security benefits.
- (2) All wearing apparel of every person in the family except that only \$500 in value in furs, jewelry, beadwork, and personal ornaments for the person owing the child support obligation.
- (3) Items of bona fide religious or cultural significance.
- (4) Tools, equipment, boats, gear, vehicles, instruments and materials used by the person to obtain income.
- (5) Provisions and fuel for the comfortable maintenance of the home for three months.
- (6) Any real property on Seminole Nation lands.
- (7) A motor vehicle not exceeding \$2,500 in value.

(f) Authority of the Child Support Enforcement Agency.

- (1) Implementation. The Agency has the sole authority to arrange for implementation of a child support enforcement order, including wage withholding and other means of enforcement.
- (2) Federal Income Tax Refund Offset.

(A) The Agency has sole authority for the following actions:

- (i) Receive funds certified by a state under the Federal Income Tax Refund Offset Program and owed on a Seminole Nation child support case.

(ii) Request that a state certify a Seminole Nation child support case to the Federal Income Tax Refund Offset Program.

(iii) Certify a Seminole Nation child support case to the Federal Income Tax Refund Offset Program to receive funds for that case.

(B) The Agency may offer assistance to help Seminole Nation families file “injured spouse” claims with the Federal Income Tax Refund Offset Program when appropriate.

(g) Failure to Comply with Child Support Order. Failure to comply with a Seminole Nation child support order, including a wage withholding order and a court order to request wage withholding, may be punishable as contempt of court.

(h) Custody and Visitation Rights. If a party fails to comply with a child support order or a provision in a Parenting Plan, the other party's obligations under the Parenting Plan or child support order are not affected. This means that a party cannot withhold visitation if the other party doesn't pay child support.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 148. Transfer/Assignment of TANF Recipients' Rights**

(a) The child support rights of a child who receives tribal TANF are transferred (assigned) to another tribe because the TANF paying tribe is providing support for the child during a time period when child support payments should be helping to support the child. When child support payments are made on an irregular basis, a family has no financial stability.

(b) The TANF paying tribe can assist the family achieve financial independence by providing reliable, predictable TANF assistance while collecting child support owed to the child. When child support payments are made to the TANF tribe through an assignment, the payments are not counted as income of the TANF recipient and therefore they do not cause fluctuations in his or her TANF grant. The paying party's financial connection with the child is maintained through the child support pass-through, where applicable.

(c) Should the Seminole Nation establish a TANF program in the future, a child receiving TANF cash assistance will be affected by his or her rights to past, present and future child support. Support will be deemed to be transferred (assigned) to the Seminole Nation, subject to the limitations set forth in this Subchapter.

(d) When rights are transferred (assigned) to a TANF paying tribe, they are characterized as temporary or permanent as follows:

(1) Temporary Transfer/Assignment. This is the transfer of rights to past child support that became due before the family began receiving TANF cash

assistance. The transfer of these rights is temporary, which means that the child support may be collected and held by the TANF paying tribe, but it may not be utilized to reimburse the TANF paying tribe for the child's TANF grant. While it is held by the TANF paying tribe, it shall not be considered an asset of the family. This transfer terminates when the child stops receiving TANF cash assistance and any temporarily transferred funds collected by the TANF paying tribe shall be paid to the payee under the child support order.

- (2) Permanent Transfer/Assignment. This is the transfer of rights to past, present, and future child support becomes due while the family is receiving TANF cash assistance. The transfer of these rights is permanent. The amount of this transfer is limited to the amount of TANF cash assistance received for the child covered by the child support obligation or the child support obligation for that child, whichever is less. This transfer terminates when the child stops receiving TANF cash assistance.

(e) Use of Payments.

- (1) Child support payments retained by the TANF paying tribe under a permanent TANF assignment shall be expended for the benefit of the Nation's children and their families.
- (2) Pass-Through. Money received by the Nation under a TANF recipient's child support transfer of rights may be used to provide a pass-through payment to that TANF recipient on behalf of the child. Such a pass-through payment shall not be considered income for purposes of TANF eligibility or counted against the amount of the grant. The amount of a uniform pass-through payment to TANF recipients shall be determined by regulation of the Legislature for the Nation's TANF Program.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 149. Distribution of Child Support Payments**

(a) Except as provided in paragraph (b), child support payments made to the Nation shall be distributed in the following order of preference within each case:

- (1) Payment of current support.
- (2) Payment of the custodian's arrears.
- (3) Payment of transferred/assigned arrears.

(b) Lump-sum payments from Federal Income Tax Refund Offsets shall be distributed in the following order of preference:

- (1) Payment as pass-through to a custodial party receiving Tribal TANF cash assistance, if there is no current child support payment to apply to the pass-through. These payments shall be credited against arrears assigned to the TANF paying tribe.
- (2) Payment of transferred (assigned) arrears.
- (3) Payment of the custodian's arrears.

(c) **Distribution to Multiple Payees.** If the person with the child support obligation owes child support on more than one case, distribution shall be as follows:

- (1) **Current Support.** If there is not enough to pay all current support owing, the available funds shall be pro-rated to each case according to that case's share of the total current support owing on all cases.
- (2) **Arrears.** If there is money left over after all current support has been paid, the available funds shall be applied to the arrears owing on all cases, pro-rated to each case according to that case's share of the total arrears owed on all cases. Within each case, the money is first applied to any arrears owed the custodian and next to TANF arrears.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 150. Reduction of Past Child Support Owed**

This section allows the Court to forgive back unpaid child support under certain circumstances. The child support policies of outside governments have frequently created hardship for Seminole children and their families; for example, when income is imputed and creates large back debts, when the child's parents reunite and collection action on the past debt takes away resources from the child, when collection action is taken against individuals who are caring for their adult children and grandchildren, and other actions which offend Seminole values of fairness and due process.

- (a) **Types of Debt Defined.**
  - (1) **Debt to Parent or Custodian.** A debt of past child support owed to the parent or custodian on behalf of the child may be reduced only by agreement of the parties.
  - (2) **Debt to Tribe or State.** A debt of past child support owed to a government for reimbursement for public assistance may be reduced or eliminated as provided in this Code.

(b) Petition. A party who wishes to reduce a debt for past child support may file a petition for reduction of past child support debt. The petition shall be prepared on a form approved by the Court and it shall contain the following information:

- (1) The name, address, tribal affiliation, date and place of birth and social security number of the petitioner and the child for whose benefit the child support was ordered.
- (2) The name, address, tribal affiliation, date and place of birth and social security number of the person to whom the child support is owed or was originally owed.
- (3) If the debt is owed to a government for reimbursement for public assistance, the name and address of the appropriate government agency.
- (4) A copy of the child support order under which the debt accumulated.
- (5) The total amount of the past child support debt.
- (6) The amount of proposed reduction of the past child support debt.
- (7) The reason why the past child support debt should be reduced or eliminated.
- (8) Financial information, as provided in Section 140(e).
- (9) The recommendation of the Agency.

(c) Procedure.

- (1) Hearing Date. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was received, unless continued for good cause.
- (2) Notice of Hearing. The date, time and place of the hearing shall be contained in the summons.
- (3) Service of Petition and Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition and a summons. The petition and summons shall be served as provided in Section 167. The parties may sign a petition and by doing so, waive the requirements of service of the petition and summons.
  - (A) Summons. The summons, prepared on a form approved by the Court, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within 60 days of the date of publication if service is by publication, the Court may proceed without the respondent.

(B) Proof of Service. The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given. In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing publication and a copy of the summons as published shall constitute the proof of service.

(4) Response. Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The respondent shall cause the response to be served on the petitioner as provided in Section 169.

(5) Notice to Agency. If the past child support debt is owed to a government, notice shall be served on the appropriate agency of that government. The person who assigned the child support rights to the government need not be a party to the hearing if the entire child support debt is owed to the government.

(6) Hearing.

(A) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.

(B) The burden of proof shall rest on the moving party to prove that the support obligation should be reduced, as provided in Section 150(d).

(C) If the parties have proposed an agreed order and the Agency has not objected, the Court shall enter the agreed order.

(d) Reduction of Past Support Owed to a Tribe or State. The Court may grant a reduction or complete forgiveness of past support owed to a tribe or state when the past debt was not based on the paying parent's actual income or when payment of the past debt would create substantial hardship.

(1) Substantial hardship shall include either of the following circumstances:

(A) The child on whose behalf the past debt accumulated is now living with and being supported by both parents who are reunited.

- (B) The child on whose behalf the past debt accumulated is now living with and being supported by the party owing the past support debt.
- (2) Substantial hardship may include any of the following circumstances:
  - (A) The party owing the past support debt is complying with the current child support obligation for the child on whose behalf the past debt accumulated and he or she has insufficient resources to pay both current and past support.
  - (B) The party owing the past support debt is currently supporting other children, grandchildren or elders and payment of the past support debt would prevent him/her from adequately supporting him/herself and the others.
  - (C) The child on whose behalf the past debt accumulated is over 18 years old and payment of the debt would significantly burden the party's ability to support him/ herself.
- (e) Reduction of Past Child Support Owed to a Parent.
  - (1) When a parent agrees to a reduction or complete forgiveness of past child support owed to him or her, the Court may hold an in-chambers, ex-parte (individual) discussion with this parent to ensure that he or she understands and consents to the proposed agreed order and that the proposed agreement was not the result of coercion, threat, duress, fraud, overreaching, or improper promise.
  - (2) If the parent wants a friend, family member, or other person to be present, the Court shall allow it, after first speaking alone with the party. If a party is unavailable or chooses not to be at the hearing, he or she may submit an affidavit verifying the agreement.
- (f) Findings and Conclusions. After the hearing, the Court shall enter findings of fact and conclusions of law and a separate reduction of past child support owed order. The findings of fact and conclusions of law shall address the following:
  - (1) Subject matter jurisdiction.
  - (2) Personal jurisdiction over all the parties.
  - (3) The total amount of past child support owed and to whom it is owed.
  - (4) The basis for the decision, including the agreement of the person to whom the child support debt is owed, if a parent.
  - (5) The amount of reduction of past child support, if any.



- (6) The conditions, if any, upon which reduction of the past child support debt is contingent.
- (g) Order.
  - (1) The Agency may recommend, and the Court may fashion an order, making the reduction of past support contingent upon making timely payments of current support as well as timely payments on the arrears not forgiven. It is Seminole Nation policy to attempt to create orders for the reduction of past child support which are most likely to be carried out successfully.
  - (2) The reduction of past child support owed order shall include the following:
    - (A) A statement that the Court has jurisdiction over the case.
    - (B) The total amount of the child support debt.
    - (C) The amount of reduction of the child support debt.
    - (D) The conditions, if any, upon which reduction of the past child support debt is contingent.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 151. Child Support Guidelines**

Oklahoma Statutes for child support percentage of income standard shall apply and may be deviated from at the discretion of the Court.

- (a) General.
  - (1) The Seminole Nation Child Support Guidelines set forth the rules under which a child support obligation is established. They set a standard of adequate support for children subject to the ability of the parents to pay.
  - (2) The Schedule is the table of levels of cash child support that correspond to the income of the paying party. It is used according to the Guidelines and is intended to provide consistent treatment of individuals in similar circumstances.
- (b) Application. The Guidelines and Schedule are to be applied as follows:
  - (1) Parties. The parties may use the Guidelines and Schedule in reaching an agreement.

- (2) Agency. The Agency shall be guided by the Guidelines and Schedule in assisting the parties to reach agreement. When the parties are not in full agreement on the amount of child support, the Agency shall be guided by the Guidelines and Schedule in making its recommendation to the Court.
- (3) Court. The Court will generally enter an agreed order, as provided in Section 141 or adopt the Agency's recommendations. In those cases in which the Court does not do so, it shall apply the Guidelines and Schedule to the circumstances of the parties.

(c) Establishing a Child Support Obligation. A child support obligation is established under the Guidelines and Schedule using the following steps:

- (1) Calculate the monthly income of the party obliged to pay child support and subtract the allowable deductions.
- (2) Determine the total number of children to whom the party has a duty to support, as provided in paragraph (e), below, and find the range in the Schedule which corresponds to the party's income and number of children.
- (3) Determine the amount within the range that is appropriate to the circumstances of the family, based on the factors listed in paragraph (f), below, except for health insurance.
- (4) Determine any amount of extra child support obligation for months when seasonal income is received, as provided in paragraph (f)(3), below.
- (5) Add any additional amount required for health insurance as provided in paragraph (k), below, not to exceed the upper limit within the appropriate range.
- (6) Determine non-cash contributions in appropriate circumstances, as provided in paragraph (j), below.
- (7) Establishment of child support obligation when there is shared physical custody. In the absence of an agreement as to the amount of child support, when the parties each provide a home for the children and the children will spend a significant percentage of the year in each home, the Court may prorate the child support obligation between the parties.

(d) Calculation of Income as Basis for Child Support Obligation. The non-custodial party's obligation shall be based on his or her monthly income less allowable deductions.

- (1) Income means revenue from any source including but not limited to:
  - (A) Salaries, wages, tips, commissions, and regular overtime.

- (B) Business income such as sales of goods, services and products, whether legal or illegal.
  - (C) Deferred compensation.
  - (D) Income from second jobs.
  - (E) Predictable, non-recurring income of over \$500 per quarter.
  - (F) Regular bonuses.
  - (G) Treaty payments.
  - (H) Per capita distribution payments.
  - (I) Lease or rental income.
  - (J) Compensation received under a contract.
  - (K) Dividends.
  - (L) Severance pay.
  - (M) Pensions.
  - (N) Interest, trust income, annuities, and capital gains.
  - (O) Workers compensation benefits and unemployment insurance benefits.
- (2) Allowable deductions from income include:
- (A) Tribal taxes.
  - (B) Federal and state income taxes.
  - (C) Social security (FICA) deductions.
  - (D) Mandatory pension plan payments.
  - (E) Union or professional dues.
  - (F) State industrial insurance premiums.
  - (G) Normal business expenses allowable under IRS rules.
  - (H) Normal treaty income business expenses, determined by:

- (i) The standard treaty income business expense deduction developed by the applicable tribe; or
  - (ii) The IRS rules applicable to normal non-treaty business expenses.
  - (iii) Self-employment taxes for self-employed persons.
- (3) Disclosure is required for the following, although not included as income:
  - (A) Social security benefits.
  - (B) Disability insurance benefits.
  - (C) Income from a second spouse or other adult in the household.
  - (D) TANF cash assistance, general assistance benefits, SSI, food stamps or other means-based benefits.
  - (E) Child support received by a parent for the support of other children.
- (4) Calculation of Income in Default Cases. In the absence of financial information from the defaulting parent, his or her income shall be based on information provided by the Agency.
- (e) Calculation of Child Support When There Are Children from Other Relationships.
  - (l) When a party has a legal duty to pay child support for children from other relationships, calculation of the amount of the child support per child shall be based on the total number of children from all relationships.
    - (A) If possible, at the time an order is entered, the Court shall modify any existing orders so that they are based on the total number of children from all relationships that the parent has a duty to support.
    - (B) If an existing order cannot be modified at the time the order is entered, the child support obligation for the child before the Court shall be established based on the number of children before the Court, but the monthly obligation for the first six (6) months shall be reduced so that the total child support paid to all persons during that period does not exceed the scheduled amount for the total number of children from all relationships. During this six (6) month period, the Agency shall assist the party to modify the previous child support order(s). The six (6) month period may be continued for good cause. Upon modification of the previous order(s), the Court shall modify its order based on the total number of children from all relationships.

(C) If a previous child support order for children from another relationship cannot be modified, the Court shall adjust the child support obligation for the child before the Court so that the total child support paid to all persons does not exceed the scheduled amount for the total number of children from all relationships.

(2) The provisions of this paragraph (e) apply only to the extent that the child support obligations for children from other relationships are actually paid.

(f) Adjustments within Schedule Ranges. A child support obligation established under these Guidelines shall be set within the range provided in the Schedule for the income level of the paying party. In determining the appropriate amount within the range, the factors in this section shall guide the parties' agreement, the Agency and the Court.

(1) Age of Child. The obligation shall be set higher in the range for children 12 years old and older and closer to the lower end of the range for younger children.

(2) Work-related Day Care. The obligation may be set higher in the range to cover the reasonable cost of work-related day care of the custodial parent. This obligation shall terminate if work-related day care is terminated or it shall be reduced proportionately if the child is in work-related day care for a reduced period of time.

(3) Seasonal Income. If the paying party's income is seasonal, the obligation may be set on a schedule that varies the amount at different times of the year.

(4) Extraordinary Medical Expenses for the Child. The obligation may be set higher in the range to cover extraordinary medical expenses for the child, not covered by health insurance.

(5) Extraordinary Debt Not Voluntarily Incurred. The obligation may be set lower in the range when the party owing support makes payments on extraordinary debt not voluntarily incurred such as court fines.

(6) Use of Non-Cash Services or Resources. The obligation may be set lower in the range when non-cash services or resources are regularly and reliably provided, as set forth in paragraph (j) below.

(7) Possession of Wealth. The obligation may be set higher when the parent owing support possesses an abundance of valuable material possessions, resources, money, or has the ability to generate a stream of income that is greater than monthly expenses or even slightly above expenses and purchase whatever material possession the parent may want or need. Luxury items that may equate to the abundance of possessions may include, but are not limited to, expensive homes, cars, boats, all-terrain

vehicles, sports equipment, recreational vehicles, camping trailers, vacation homes, additional land/property, and multi-annual vacations.

(g) Period of Obligation.

(1) Prior to Filing.

- (A) Establishing a child support obligation for a period prior to the date of filing the case in Court is disfavored by the Seminole Nation. This is due to the difficulty in obtaining accurate past financial information and because of the burden on the paying party if the party is also paying current support.
- (B) There are some circumstances when it is appropriate to have a \$0 or default order for the period before filing.
- (C) In every case where child support is ordered for any period before filing, there must be a recommendation by the Agency regarding the duration and amount of pre-filing child support.

(2) Termination.

- (A) A parent's financial duties last until any of the following events:
  - (i) The death of the child.
  - (ii) The death of the parent obliged to pay support.
  - (iii) The child reaches the age of eighteen years old or, if the child is still in high school, until graduation or the child turns nineteen, whichever is earlier.
- (B) The child support obligation terminates at the end of the month in which the financial duty terminates.

(h) Payment.

- (1) Payment of a child support obligation shall be made to the Agency for distribution to the appropriate recipient, as provided in Section 149.
- (2) If the Agency becomes aware that a child is no longer living with the person receiving child support on behalf of the child, the Agency or the paying party may request a review hearing to determine to whom the child support payments will be disbursed for the benefit of the child.
- (3) If the parties agree or the Court finds it to be in the best interests of the child, it may order:

(A) Allowance to Child. A portion of the cash support to be disbursed to the child as an allowance; or

(B) Trust or Savings Account. A portion of the cash support to be deposited into a trust or savings account for the benefit of the child under such terms as the Court deems just.

(4) There may be circumstances when payment to the Registry of a state or another tribe would be appropriate. The Agency will identify those circumstances, if applicable.

(i) Credit for Benefits. When a child receives benefit payments such as social security, veterans, or the like, as a result of contributions made by the party with the child support obligation, credit shall be given to offset all or part of the child support obligation, in the amount of the payment. The Court shall indicate in the child support order the total child support obligation and the amount that shall be covered by benefit payments made directly to the child. If the benefit payment is more than the current child support obligation, the difference shall be credited against any arrears that the custodian has not assigned to a government.

(j) Non-Cash Services and Resources. Although consistent with Seminole Nation culture and tradition, non-cash services and resources are difficult to monitor and guarantee. The primary purpose for their use in connection with cash child support is to strengthen the bond between the child and the non-custodial parent. Non-cash services and resources are not a substitute for cash child support obligation.

(1) The non-custodial parent may be ordered to provide non-cash services and resources in connection with the child support obligation under the following circumstances:

(A) When the parties agree.

(B) When the non-custodial parent's income is below the minimum income level for ordering cash child support in the Child Support Schedule.

(C) When the non-custodial parent's income is insufficient to cover the obligation(s) for the total number of children from all relationships.

(D) When the non-custodial parent is a teenager in school.

(E) When the non-cash services and resources are regular and reliable so that the obligation may be established lower in the range.

(2) The child support order shall specify the quantity, quality, condition and frequency of the non-cash services and resources.

- (3) Members of the non-custodial parent's extended family are welcome to contribute non-cash services and resources. They may be credited to the non-custodial parent's obligation if they meet the court's requirements.
- (4) Non-cash services and resources may include, but are not limited to:
  - (A) Help with extra sports and school activities or expenses.
  - (B) Day care provided by the non-custodial parent.
  - (C) School clothes.
  - (D) Car or home maintenance or repair.
  - (E) Firewood, fish, shellfish, game, or berries, but only by agreement of the parties.
  - (F) Tutoring or volunteering at the child's school.
  - (G) Transportation to the child's activities.
  - (H) Pow Wow regalia.
  - (I) Teaching treaty skills or cultural knowledge.
- (k) Health Insurance.
  - (1) The Agency shall make a recommendation as to the best health insurance coverage for the child. The Court shall include provision of health insurance for the child in every child support order.
    - (A) When health insurance is available at reasonable cost through one or both party's employment or union, that party (or both parties) shall provide coverage. "Reasonable cost" for the parent with the child support obligation means that when the child's portion of the health insurance premium is added to the basic child support obligation, the total obligation does not exceed the upper limit of the range.
    - (B) If health insurance is not available to either party at reasonable cost, a \$0 health insurance order shall be entered. If the child is eligible for health care services through the Nation, another tribe or the Indian Health Service, one or both parties shall be ordered to cooperate with the appropriate entity to obtain services for the child.
    - (C) Routine medical expenses are included within the Schedule.



- (2) The Agency may make arrangements to enroll a child in a health insurance plan, consistent with a court order on health insurance.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 152. Child Support Schedule**

- (a) The Child Support Schedule is based on the following:
  - (1) Specific descriptive and numeric criteria and results in a computation of an amount of child support, which is sufficient to meet the basic needs of a child for housing, clothing, food, education, health care, recreation, and goods and services required by physical or mental disability.
  - (2) The income of the non-custodial parent and the number of children there is a duty to support.
- (b) The Schedule provides for a range of payment levels for each income category. The level shall be adjusted to the circumstances of each case according to the factors set forth in Section 151(f).
- (c) Review Requirement. The Schedule shall be reviewed by the Agency every three years and any recommendations for amendment shall be provided to the Legislature.
- (d) Child Support Schedule. The Seminole Nation adopts the State of Oklahoma Child Support Schedule unless otherwise adopted by this Court.
- (e) Deviation from Schedule.
  - (1) It is against Nation policy to establish or enforce a non-voluntary child support order outside the range in the Seminole Nation Child Support Schedule that corresponds with the paying party's income level.
  - (2) The Agency may recommend and the Court may order a child support obligation set under the guidelines which is outside the range in the schedule only if the obligation is supported by agreement of the parties. If the child support order deviates from the range in the schedule, the Court shall enter a written finding stating the amount of support that would have been required under the schedule and justification as to why that amount would be unjust or inappropriate. [For example, it is intended that if the top of the range is \$250 and the parties agree to \$300, the order shall state this.]

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 153. Child Support Review Hearings**

(a) Purpose. The primary purpose of a child support review hearing is to give the parties and the Court an opportunity to ensure that child support payments are being made as provided in the order. Either party shall have the opportunity to:

- (1) Raise questions or concerns they have about a Parenting Plan;
- (2) Move for modification of the child support order; or
- (3) Request payments as provided in paragraphs (f) and (g) below.

(b) Timing. A mandatory review hearing shall be scheduled three (3) months after the child support order was issued. Thereafter, review hearings shall be scheduled every twelve months after the child support order was issued. The date for the first review hearing shall be set by the Court at the time the order is issued and no further notice of that hearing is necessary. The Agency shall notify the Court when it is time to schedule the annual review hearing for each case. The Court may order additional review hearings if it is necessary.

(c) Waiver. Except for the first, mandatory review hearing, a review hearing may be waived if both parties file a request to waive the hearing and the Agency agrees to the waiver.

(d) Enforcement of Child Support Order. If child support payments have not been made as required by the order, the Agency shall make a recommendation to the Court regarding appropriate enforcement of the child support order. In any case which involves Nation TANF or another tribe or a state, the Agency has the sole authority to raise enforcement issues and represent the interests of the child in receiving child support. If the Court finds that a child support obligation is overdue or if there is a history of non-compliance with the order, the Court shall order wage withholding or other means of enforcement, as provided in Sections 147(c) and 147(d).

(e) Modification of Child Support Order. Review hearings are not intended to be annual modification hearings. However, a party may file a motion for modification, as provided in Section 146, prior to the review hearing and, if timely filed, the Court may schedule a hearing on modification at the same time as the review hearing.

(f) Payment for Extraordinary Medical Expenses. The Court may order the paying party to make payments in addition to the regular child support payments upon presentation of receipts or other proper proof that the child has had extraordinary medical expenses as provided in Section 151(f)(4). Adjustments may be added to future payments, provided that no total monthly payment may exceed the upper limit of the scheduled range for the income of the paying party.

(g) Reimbursement.

- (1) Upon presentation of receipts or other proper proof, the Court may order reimbursement and/or repayment as follows.

- (A) Reimbursement to the paying party for work-related day care expenses paid but not utilized by the receiving party for work or work-related activities.
- (B) Repayment to the Nation by the party who received child support on behalf of a child who stopped residing for a month or longer with that party, if payment was originally made to the Nation.
- (2) Overpayment reimbursement shall be applied first to arrears owed. If no arrears are owed, the reimbursement may be paid directly or applied as a credit against future support.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 154. Court Appeals**

- (a) Any interested party to the Court hearing may appeal a final Court order on a specific legal issue.
- (b) Procedure. An appeal to the Nation's Appellate Court may be taken from any order, decree, or judgment of the Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Court. The notice of appeal must be in writing and taken within thirty (30) days from the entry of the order, decree, or judgment appealed from.
- (c) Record for Purpose of Appeal. A record of proceedings shall be made available to the child, his parent, guardian, or custodian, the child's counsel, and others upon Court order. Costs of obtaining this record shall be paid by the party seeking the appeal.
- (d) Stay Pending Appeal. The pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 155. Severability**

If any provision or provisions of this Act in the future be declared invalid by the Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

[Subchapter History: Chapter Three Subchapters C and F renumbered here as Chapter One Subchapter E and all sections within, except for former section 304

which has been renumbered as section 103, are renumbered according to new placement in Chapter One on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER F**

### **RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS**

#### **Section 156. Purpose**

The purpose of this Subchapter is to provide for the enforcement of child support orders of another tribe, state, or other foreign jurisdiction.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 157. Definitions**

As used in this Subchapter, the following shall have the meaning provided here.

- (a) “Court” means the Nation’s Trial Court.
- (b) “Nation” means the Seminole Nation.
- (c) “Per Capita Payment” means a distribution from the Nation to a member of the Seminole Nation made pursuant to the Nation’s Laws.
- (d) “Petition” means a written order to register and enforce a Child Support Order of another jurisdiction under this Subchapter.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 158. Foreign Child Support Order**

(a) Petition. Any person, tribe, state, or foreign jurisdiction that wishes to enforce a Child Support Order against per capita payments, wages, compensation, or other payments from the Nation must apply to the Court by filing a petition to register and enforce a foreign Child Support Order.

- (1) The petition shall be accompanied by an authorized copy of the Child Support Order. The foreign Child Support Order shall recite or be accompanied by documentation showing the jurisdiction of the foreign court or administrative agency, the authority for entering the order, the

name of the person/defendant subject to the order and his/her relationship to the child, and the amount of child support.

(b) Service of Process. The defendant shall be served with a copy of the petition and Child Support Order. Service shall be made in any manner permitted for service of process commencing an action in the Court under the Seminole Nation Rules of Civil Procedure.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 159. Hearing**

Within twenty (20) days after service of the petition, the defendant may request a formal hearing regarding the Child Support Order. The hearing shall not review the merits of the Order and shall be limited to issues regarding:

(a) Whether the foreign court or administrative agency had jurisdiction to enter the child support order.

(b) Whether the defendant had due process including proper notice and a fair hearing.

(c) Whether collusion, fraud, or clear mistakes of law or fact are present.

(d) Whether there is conflict with any state or federal law.

(e) Whether there is a conflict with the Nation's law or public policy.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 160. Judgment**

(a) Judgment shall either enforce the Child Support Order and grant child support payments or dismiss the motion on one or more of the grounds set forth in Section 159.

(b) Except as otherwise provided in this section, a judgment shall not allow any modification from the foreign Child Support Order or otherwise change the percentage, agreed amount, or amount if in arrears of child support to be awarded.

(c) Default Judgment. If the defendant fails to respond within twenty (20) days to the child support petition, the Court may enter a default judgment granting the relief sought in the Petition.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 161. Modification of a Foreign Child Support Order**

(a) A party may request modification of a foreign child support order by filing a child support petition including all the information set forth in Section 138 of this Title, as well as a copy of the foreign child support order.

(b) The Court shall refer the modification petition to the Seminole Nation Child Support Agency or contractor for its recommendation.

(c) The Court may modify an order issued by another nation, state, or tribe if the Tribe has jurisdiction to make a child support order; and

- (1) The court of the other nation, state or tribe no longer has continuing, exclusive jurisdiction of the child support order because that jurisdiction is no longer the child's state or tribe or the residence of any party; or
- (2) Both parties have agreed to the Seminole Nation District Court assuming jurisdiction over the modification.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 162. Enforcement**

(a) The Court may enforce the judgment for child support through an order garnishing the defendant's wages, compensation, or other payments owing from the Nation and any of its enterprises, programs, and projects other than per capita payments to defendant under paragraph (b) below.

(b) Enforcement against Per Capita Payments. Each judgment entered by the Court for child support under this section shall, unless ordered otherwise by the Court based upon its construction of the foreign order and upon receipt by the Department of Treasury and the Office of Tribal Enrollment, constitute a lien upon and assignment of defendant's per capita payments under the Seminole Nation Laws. A judgment received within fifteen (15) days of a per capita payment distribution shall not be effective for that payment, but shall be effective for all subsequent payments.

- (1) An order of the Court placing a lien upon and assigning defendant's per capita for child support shall be immediately directed to the Office of Tribal Enrollment and the Department of Treasury of the Nation.
- (2) Except as provided in paragraph (3) below, the Department of Treasury must withhold the specified amount from the debtor-parent's per capita payment and transmit such funds directly to the Clerk of Court or the Court's designee. The Clerk of Court shall remit the payments to the claimant if payment is transmitted to the Clerk instead of a designee.

- (3) The maximum amount in any one per capita payment check subject to withholding under this Ordinance is sixty percent (60%).

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 163. Termination**

The debtor-parent's obligation to pay child support shall lapse when judgment is satisfied.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Three Subchapter G and all sections within renumbered according to new placement in Chapter One Subchapter F on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**SUBCHAPTER G  
JURISDICTION AND COURT PROCEDURES**

**Section 164. Tribal Enrollment Records**

(a) Enrollment of all children eligible for membership in the Seminole Nation is essential to the survival of the Tribe, the furtherance of tribal sovereignty, and rights of future generations of potentially eligible children. In order to encourage acknowledgement of paternity for enrollment purposes, all enrollment records, including birth certificates, are confidential and are not subject to subpoena by any court.

(b) This Code vests no jurisdiction in the Court over tribal enrollment, but DNA test results and paternity findings which result in a need for correction of Seminole Nation enrollment records may be forwarded to the Office of Tribal Enrollment and Committee on Tribal Enrollment as necessary.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 165. Jurisdiction**

(a) The Seminole Nation District Court is vested with the fullest jurisdiction permissible under applicable law. Personal jurisdiction includes, but is not limited to the following people.

- (1) Members of the Seminole Nation.

- (2) Individuals personally served with a summons on the Nation's lands.
- (3) Individuals who consent to the jurisdiction of the Court by entering a general appearance or filing a responsive document or by participating in the proceeding unless participation is for the purpose of contesting jurisdiction.
- (4) Individuals who resided on Nation lands with a child who is the subject of the proceeding.
- (5) Any individual who had a duty to, and failed to, support a child who:
  - (A) Resides on Nation land; or
  - (B) Is a member of a Seminole family.

(b) In every action under this Code, the Court shall retain continuing, exclusive jurisdiction over the child to the fullest extent permitted by law.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 166. Procedures - General**

(a) Proceedings under this Code are civil actions and are governed by applicable provisions of the Seminole Nation Rules of Civil Procedure, except where this Code provides otherwise.

(b) There is no right to a jury in any proceeding under this Code.

(c) Any Seminole person appearing in the Court shall have the right, at his own expense, to a spokesperson, lay advocate, or attorney, as allowed under Seminole Nation Rules of Civil Procedure, or to proceed pro se. Any other person shall have the right to an attorney at his own expense or may proceed pro se.

(d) Filing Fee:

- (1) A filing fee of \$25.00 shall be submitted with a petition.
- (2) When one case involves proceedings under more than one chapter of this Code, there shall be only one filing fee.
- (3) The filing fee may be waived by the Court in its discretion upon good cause shown.

(e) Petition

- (1) Petitions shall be prepared on forms approved by the Court.



- (2) The parties may both sign a petition so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 167. Summons**

(a) Service of Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition on a form approved by the Court. The Court must cause the respondent to be served with a summons indicating the hearing date.

- (1) Personal Service. Personal service may be effected by personally delivering a copy of the complaint to a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served. Service must be made by a person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family.
- (2) Service by Mail. If the person cannot be found within the Nation's lands, service may be accomplished by certified mail, return receipt requested.
- (3) Service by Publication.
  - (A) When the respondent cannot be found within the Nation's lands and attempts to serve the respondent by certified mail have failed, the petitioner may ask the judge to allow service by publication. If the request is granted, the petitioner shall follow the following procedures:
    - (i) Publish the summons for two consecutive publications of the Cokv Tvlvme, or
    - (ii) Publish for four consecutive weeks in a newspaper of general circulation in the county of residence of the respondent, if known.
  - (B) If service by publication is permitted, the Court may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the respondent to respond.

(b) Content.

- (1) The summons shall notify the respondent that if he does not appear or respond to the petition within twenty (20) days from the date of service (or

within sixty (60) days of the date of publication if service is by publication) the Court may proceed without the respondent.

(2) The summons shall contain notice of the date of the hearing.

(c) Proof of Service.

(1) The person serving the summons and petition shall file with the Court certification that he has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, the instructions given, and the signature of the person receiving the summons.

(2) In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service.

(3) In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

(d) Response. Except for joint petitions, within twenty (20) calendar days after the respondent is served with a copy of the petition (or within sixty (60) days if service was by publication), the respondent shall either:

(1) File a written response or contact the Court and state whether he or she will appear in Court to respond to the petition; or

(2) File his or her own response on a form approved by the Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 168. Hearings**

(a) Initial Hearing. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was filed, unless otherwise provided in this Subchapter or unless continued for good cause.

(b) Notice. The Court shall issue notices of hearing to all parties.

(1) Initial Hearing. Notice shall be given at least twenty (20) calendar days before the hearing. This notice shall be contained in the summons and served with the petition.

(2) Hearings for Temporary Orders. Notice shall be given at least five (5) calendar days before the hearing or such time as the Court feels is necessary to respond to the motion.

- (3) Hearings for Emergency Restraining Orders. No notice is required before a hearing for emergency restraining orders under this Code.
- (4) Other Hearings. Notice shall be given at least twenty (20) calendar days before the hearing, except that the Court may shorten the time for responding if justice so requires.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 169. Service of Documents Other than Summons and Petition**

Except as otherwise provided in this Subchapter, every document which is required or allowed to be served on a person shall be given by any of the following:

- (a) Personal service in the same manner provided in Section 167(a) for service of the petition.
- (b) Certified mail with return receipt requested, first class U.S. mail.
- (c) Any other method approved in advance by the Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 170. Evidence and Burden of Proof**

Unless additional rules are stated in each chapter, rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Seminole Nation District Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 171. Recognition and Enforcement of Other Courts' Orders**

- (a) See Recognition of Foreign Child Support Orders, Chapter, Subchapter F of this Title.
- (b) The Court may give recognition to the court or administrative orders, judgments or decrees of other Indian nations and tribes, states or federal agencies as a matter of comity (courtesy).
- (c) Certified foreign orders may be given recognition provided that:
  - (1) The order does not violate the Indian Child Welfare Act;

- (2) The court granting the order had jurisdiction over the case and the parties;
  - (3) The parties were afforded due process of law; and
  - (4) The order does not violate the public policy of the Seminole Nation
- (d) A maximum withholding of 60% of the payor's income may be withheld.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

**Section 172. Transfer of Jurisdiction**

(a) The Agency has the authority to accept electronic transfers of cases from within the state of Oklahoma. The Court has the authority to accept transfers of cases from other courts or governments for proceedings under this Code.

(b) The Court shall only transfer a case under this Code to another court or government if it has no jurisdiction over the case or for compelling reasons determined in a hearing.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Three Subchapter D and all sections within renumbered according to new placement in Chapter One Subchapter G on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO THIRD PARTY GUARDIANSHIP**

### **SUBCHAPTER A GENERAL PROVISIONS, POLICIES AND DEFINITIONS**

#### **Section 201. Authority**

The Seminole Nation authorizes guardianship by third parties (non-parents) under the limited circumstances of this code.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

#### **Section 202. Purpose**

When it appears to the Court to be in the best interest of a child, the Court may appoint guardians for the persons and/or property of children under the Court's jurisdiction who have no guardian, or where there is such instability within the home that the appointment of a guardian would be in the child's best interests. Such appointment may be made on the petition of a proposed guardian or by the minor child if sixteen (16) years of age. Before making such an appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child and to such other traditional relatives of the child residing within or without the jurisdiction of the Seminole Nation.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

#### **Section 203. Definitions**

As used in this Chapter, the singular includes the plural and the plural the singular, and the masculine the feminine, when consistent with the intent of this Act. The following definitions apply:

(a) "Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

(b) "Child" means an individual who is not married and has not attained eighteen (18) years of age, or has not been deemed emancipated by the Court.

(c) "Court" means the Seminole Nation District Court.

(d) "Crime" means conduct which is prohibited by state, federal, or tribal law and is punishable by fine or imprisonment or both. Conduct punishable by forfeiture alone does not constitute a crime for the purposes of this Act.

(e) “Guardian Ad Litem” means a person appointed by the Court to represent the child’s interests before that Court.

(f) “Guardian of the Person” means a person appointed by the Court to maintain the care, custody, and control of the person of a minor child.

(g) “Guardian of Property” means a person appointed by the Court to manage the property of a child.

(h) “Indian” means any member of a federally recognized American Indian Tribe, Alaska Native, or member of a regional corporation as defined in 43 USC Section 1606.

(i) “Legal Custody” means the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, to make education decisions, and to consent to major medical, surgical, or psychiatric treatment, and as may otherwise be granted by the Court.

(j) “Multiple Displacement Assessment” means an assessment performed by the Seminole Nation Social Services Department or independent contractor previously approved by the Court to determine what if any negative effects stem from numerous changes in guardianship.

(k) “Parent” means a biological parent or a Traditional Seminole Parent as described in the definition of Seminole Traditional Parents.

(l) “Permanent Guardian” means a guardian who has been granted long term guardianship status that is irrevocable unless the guardian is unsuitable as determined by the Court or the appointed guardian petitions for revocation.

(m) “Physical Custody” means the physical custody and responsibility for the care of a child including the rights and duties to provide him/her with food, clothing, shelter, education, transportation, and emergency medical care.

(n) “Power of Attorney” means a written legal document authorizing a person to act as another’s attorney-in-fact or agent for another person, property, or healthcare.

(o) “Property” means property such as credits, savings and bank deposits, notes, bonds, proceeds from the sale of realty, and Children’s Trust Fund accounts, but does not include small monetary gifts in an amount less than \$500.00.

(p) “Residual Parental Rights and Duties” means those inherent rights and duties remaining with the parents after legal custody or guardianship, or both, has been vested in another person, including but not limited to: the responsibility for support; the right to consent to customary adoption; and the right to reasonable visitation unless restricted by the Court. If no guardian has been appointed, the “residual parental rights and duties” also includes the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment.

(q) “Suitable” means individuals who are willing and able to provide a home environment that is fit, safe, and appropriate, as well as meets the purpose of this Act.

(r) “Temporary Guardian” means a person, other than a parent, who is assigned by a court of law as having the duty and authority to provide physical care until the child turns eighteen (18) years of age or the Court grants a revocation, removal or termination of the guardianship.

(s) “Traditional Arrangement” means a mutual authorization of child placement via a Seminole traditional practice. Examples include, but are not limited to, [example: the grandparents for purposes of Seminole teachings, i.e., sacred teachings, way-of-life, etc.]

(t) “Traditional Relatives” means those people within the child’s relevant intrinsic familial network according to Seminole tradition.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter H and all sections within renumbered according to new placement in Chapter Two Subchapter A on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER B APPOINTMENT OF GUARDIAN**

### **Section 204. Appointment of Guardian Generally**

(a) The Court may appoint a guardian of the person or a guardian of the property, or both, for an individual if the Court determines that the individual is a minor child and such guardianship is in the best interest of the child.

(b) In cases where the Court orders guardianship over the person, temporary guardianship shall be considered over permanent guardianship.

(c) A guardian must wait six (6) months prior to motioning the Court to modify a Guardianship Order to reflect a change from temporary to permanent guardianship. However, the Court may consider a variety of exigent circumstances, including whether the minor child has already resided with the proposed guardian for a period of six (6) months or longer, in finding an exception to this general rule.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 205. Types of Guardianships**

Types of guardianships shall include:

(a) Temporary Guardianship of the Person. The Court may appoint a temporary guardian, based upon successful petition, under such terms and conditions as the Court sets forth in the written Order. A temporary guardianship remains in effect until the child reaches the age of majority (18 years of age) or emancipates. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent. The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(b) Permanent Guardianship of the Person. The Court may appoint a permanent guardian, based upon a successful petition, for the child under such terms and conditions as the Court sets forth in the written Order. Permanent guardianship provides for permanent custody of the child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship can only be terminated based upon the unsuitability of the permanent guardian. The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(c) Guardianship of Property. The Court may appoint a guardian of the property of a child under such terms and conditions as the Court sets forth in the written Order. The guardianship may cover all property until the child reaches eighteen (18) years of age or emancipates. It may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written Order.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter I and all sections within renumbered according to new placement in Chapter Two Subchapter B on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **SUBCHAPTER C**

### **GUARDIANSHIP PREFERENCES, POWERS AND DUTIES; LIMITATIONS**

#### **Section 206. Guardianship Preferences and Order**

The Court shall consider the appointment of a guardian for a child from the following persons in the following order so long as such placement is in the best interests of the child:

- (a) Traditional Relatives, provided preference is given to suitable relatives who are Seminole Tribal members, with priority to parents, grandparents, siblings older than 21 years of age, aunts, uncles and cousins.
- (b) Other Traditional Relatives, at the discretion of the Court upon clear and convincing evidence of the relationship to the child.
- (c) Another Seminole family.
- (d) Another American Indian family that is a relative of one of the child's parents.
- (e) A suitable American Indian family.
- (f) Another family which can provide a suitable home for Seminole children.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016  
from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC  
Title 21, § 203.]

#### **Section 207. General Guardianship Duties and Powers**

- (a) Traditional Ways and Cultural Ties. Any appointment under this Act shall encourage a child to maintain cultural ties with the Nation, to be informed of the tradition and customs of the Nation, and to have the opportunity to learn the Seminole language.
- (b) Guardianship Duties. A guardian appointed by the Court shall:
  - (1) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his/her own affairs;
  - (2) Advocate for the child's best interests;
  - (3) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child;
  - (4) Notify the Court of any change in address of the guardian(s) or child;
  - (5) Make medical, dental, and psychiatric care decisions;

- (6) Consent to marriage, if the child is still a minor;
- (7) Make decisions related to education;
- (8) Make decisions related to mobility and travel;
- (9) Consent to military service; and
- (10) Consent or refuse visitation by relatives, subject to the limitation set forth in Section 219.

(c) **Guardianship Powers.** A guardian appointed by the Court may be bestowed with the following powers:

- (1) The power to manage the child's estate.
- (2) The power to seek child support.
- (3) The power to seek a name change, if tradition and custom permits.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 208. Limitations Placed on the Guardian**

**Limitation on Authority.** When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Court under this Act, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner. The disposal of a minor child's real or personal property in any way shall subject said person(s) to contempt of court and/or to criminal and civil penalties or remedies provided by Seminole Nation law.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter J and all sections within renumbered according to new placement in Chapter Two Subchapter C on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER D**

### **GUARDIANSHIP PROCEDURES**

#### **Section 209. Jurisdiction**

- (a) General Jurisdiction.
  - (1) The Court shall have the authority to issue all orders necessary to ensure the safety of children within the Seminole community. This grant of civil jurisdiction to the Court authorizes the Court to exercise its power to issue and enforce subpoenas, issue orders of restriction, impose fines, adjudicate and punish contempt, order confinement, and issue other orders that may be deemed necessary and appropriate, in matters regarding children.
  - (2) Once the Court exercises its jurisdiction under this Act, its authority continues until such time as it may be terminated pursuant to paragraph (c) below.
  - (3) The Court may exercise jurisdiction over the following persons:
    - (A) Enrolled members of the Nation under the age of eighteen (18) years.
    - (B) Persons under the age of eighteen (18) who are eligible for enrollment in the Nation.
    - (C) Indians, as defined in Section 203(h), who are under the age of eighteen (18).
    - (D) Children of enrolled members of the Nation or other Indians, as defined in Section 203(h), including adopted children.
- (b) Jurisdiction over Adults.
  - (1) In any case in which a child has come within the jurisdiction of the Court, the Court shall have authority to exercise jurisdiction over adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the Court's presence.
  - (2) Consent to Jurisdiction. Any adult living off the Nation's Trust Lands who obtains custody of a child, however designated, from the Court personally, shall be deemed to have consented to the jurisdiction of the Court for all purposes or actions in any way related to such custody of the child.
  - (3) Procedures Applicable to Adults. Except when specific procedures are otherwise specified in this Act, all matters concerning adults or the rights of any adult which come before the Court need not be handled according to procedures established by the Court, but rather may be handled in an

informal manner as in other children's cases. The Court shall see to it that minimum standards of procedural fairness are observed.

(c) Termination of Continuing Jurisdiction. Jurisdiction obtained by the Court of a child under this Act shall continue until the child becomes eighteen (18) years of age, emancipates, or the guardianship order is revoked or terminated; at which time the continuing jurisdiction of the Court shall terminate.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 210. Initiating an Action**

(a) Petition for Guardianship.

- (1) Who May File. A petition for guardianship may be filed either by the proposed guardian or by the child if at least sixteen (16) years of age.
- (2) Contents of Petition. The petition for guardianship shall include the following:
  - (A) The full name, address, and tribal affiliation of the petitioner.
  - (B) The full name, sex, date and place of birth, residence, and tribal affiliation of the child.
  - (C) The basis for the Court's jurisdiction.
  - (D) The relationship of the proposed guardian to the child.
  - (E) The name and address of the person having legal custody of the child.
  - (F) The type of guardianship requested.
  - (G) To the best information and belief of the petitioner, a full description and statement of value of all property owned, possessed, or in which the child has an interest (if guardianship of property is requested).
  - (H) The present conditions and circumstances that warrant the appointment of the guardian.
  - (I) A list of people willing and able to become an interim successor guardian in the sudden event that the guardian cannot carry out his/her duties.

- (3) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a Clerk of the Court.
- (4) Petitioners must submit a signed Release of Information to permit the Court to conduct a criminal background check. The Court may consider charging a reasonable filing fee to cover the costs of conducting these checks.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 211. Service of Process**

(a) Initial Summons - When Required. An initial summons is issued the first time a petition is filed.

- (1) After an initial petition is filed, the Court may deem it necessary to request further investigative reports in the petition, such as a home study of the proposed guardian. When the Court accepts the filed petition, the Court shall promptly issue a summons. The summons is to be personally served on the parent(s) of the child, the proposed guardian, and any other interested party. A summons is required whether or not a person appears voluntarily or files a written waiver of service with the Clerk of Court at or prior to the hearing.
- (2) Any person can waive the time requirement to respond to the petition.

(b) Summons - Content Requirements.

- (1) The summons shall contain the name of the Court, the title of the proceedings, and (except for published summons) a brief statement regarding the substance of the petition. A published summons shall state that a proceeding concerning the child (identified by initials and date of birth only) is pending in the Court and that an adjudication will be made. The summons shall require the person or persons who have legal custody of the child to appear personally. If the person or persons so summoned are not the parent(s) of the child, then the summons shall also be issued to the parent(s) notifying them of the pendency of the proceedings and the time and place set for the hearing. No summons need be issued to a parent or parents whose parental rights have been relinquished.
- (2) The summons issued by the Court shall conspicuously display the words:

**NOTICE - VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT. SUBPOENAS: "THE FAILURE TO COMPLY WITH A SUBPOENA SHALL SUBJECT THE PERSON FAILING TO COMPLY TO THE CONTEMPT POWER OF THE COURT." THE COURT MAY FIND ANY PARTY TO**

THIS MATTER IN CONTEMPT OF COURT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

(c) Summons - Other Persons. Summons may be issued to any person within the jurisdiction of the Court whose presence the Court deems necessary.

(d) Compulsory Attendance of Witnesses. A proposed guardian(s) shall be entitled to issuance of compulsory process for the attendance of a witness on his/her behalf. A Guardian Ad Litem shall be entitled to compulsory process for the attendance of witnesses on behalf of the child(ren). Should any person fail to attend a hearing after being properly served with process and be unable to provide the Court with an acceptable explanation, the Court may find such person in contempt pursuant to the Seminole Nation contempt provisions.

(e) Payment of Travel Expenses. The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this Subchapter. A person or party must make a written request to the Court for such expense payment. The terms of travel reimbursement shall equal the amount that the Nation reimburses its employees under its employment law.

(f) Service of Summons.

(1) By Whom Served.

(A) A designee selected by the Court shall make service of summons or process.

(B) A service of summons may be made by delivering a copy to the person summoned. Provided, however, that parents of a child living together at their current place of residence may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

(C) Upon order of the Court for good cause shown, service may be accomplished by publishing the contents of the summons in the Cokv Tvlvme or another newspaper of general circulation in an area where the party was last known to be domiciled.

(2) Substituted Service - Jurisdiction. If the parent(s) required to be summoned by personal service under this Section cannot be found upon reasonable search, the fact of the child's enrollment or eligibility for enrollment shall confer jurisdiction to the Court as to any absent parent(s).

(3) Time Requirement.

(A) In the case of service of an initial petition where all parties reside in the State of Oklahoma, in order to be sufficient to confer jurisdiction on the person served, service must occur no less than

ten (10) calendar days before the time set in the summons for the appearance.

- (B) In the case of service of an initial petition to any party residing outside the State of Oklahoma, in order to be sufficient to confer jurisdiction on the person served, service will occur within a reasonable time period before the time set in the summons for the appearance.

- (g) Disobedience – Contempt.

Any person summoned as herein provided, who, without reasonable cause, fails to appear may be proceeded against for contempt of court pursuant to Seminole Nation law, and the Court may cause a bench warrant to be issued to produce such a person in Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 212. Additional Guardianship Procedures**

(a) Due to a potential conflict of interest, the Court shall not appoint Seminole Nation Social Services and/or Indian Child Welfare to play a role in cases under this Act, unless it is making a referral to Social Services for a child protection intake or for a Multiple Displacement Assessment as required under Section 227(f).

(b) Appointment of Guardian Ad Litem or Child Advocate. In its discretion, the Court may appoint a Guardian Ad Litem or qualified Child Advocate to protect the best interests of the child.

- (c) Guardianship Report.

- (1) Upon the filing of a guardianship petition, the Court may immediately request that the Guardian Ad Litem or Child Advocate submit a guardianship report on the proposed guardian, successor guardians, and child.
- (2) The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child.
- (3) No determination can be made on a guardianship petition until the guardianship report has been completed and then submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

(d) Guardian Ad Litem and Child Advocate Duties. The Guardian Ad Litem and Child Advocate, shall have the following duties, but are not limited to:

- (1) Interview the proposed guardian and report to the Court concerning the suitability of each individual interviewed to serve as guardian.
  - (2) Meet with and observe the minor child in the proposed home setting and conduct assessment of the home.
  - (3) Make written reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based. Written reports other than the guardianship report shall be filed with the Court at least three (3) days prior to the guardianship proceeding. Copies shall be provided to the other parties.
  - (4) Attend all court proceedings related to guardianship.
  - (5) Report to the Court on any matter that the Court requests.
- (e) Statement of Acts by Proposed Guardian.
- (1) The proposed guardian shall submit to the Court a sworn and notarized confidential Statement of Acts. The Statement of Acts shall be submitted to the Court no later than ten (10) days before the hearing.
  - (2) The purpose of the Statement of Acts is to allow the proposed guardian to provide answers to the below mentioned questions which will be utilized by the Court in making a determination of suitability. If the answer to any of the following questions is yes, then the proposed guardian is required to provide attachments to provide further details:
    - (A) Whether the proposed guardian, or anyone living in the proposed guardian's home, is currently charged with or has been convicted of a crime.
    - (B) Whether the proposed guardian, or anyone living in the proposed guardian's home, is required to register as a sex offender.
    - (C) Whether the proposed guardian, or anyone living in the proposed guardian's home, has had a restraining order or protective order filed against him/her in the last ten (10) years.
    - (D) Whether the proposed guardian, or anyone living in the proposed guardian's home, has been charged with, arrested for, or convicted of any form of child abuse, neglect, or molestation.
    - (E) Whether the proposed guardian, or anyone living in the proposed guardian's home, has had any reports alleging any form of abuse, neglect, molestation made to any agency charged with protecting children (e.g., Oklahoma Child Protective Services, Seminole Nation Social Services) or any other law enforcement agency



regarding him/her or anyone living within the proposed guardian's home.

- (F) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws.
  - (G) Whether the proposed guardian has ever had a license, certificate, permit, or registration required by the laws of any state for the practice of a profession or occupation suspended or revoked.
  - (H) Whether the proposed guardian has ever been removed as a guardian in any other case.
  - (I) Whether the proposed guardian, or anyone living in the proposed guardian's home, has habitually used any illegal substances or abused alcohol.
  - (J) Whether the proposed guardian, or anyone living in the proposed guardian's home, has been charged with, arrested for, or convicted of a crime involving illegal substances or alcohol.
  - (K) Whether the proposed guardian, or anyone living in the proposed guardian's home, has a social worker, parole officer, or probation officer assigned to him/her.
  - (L) Whether the proposed guardian, or anyone living in the proposed guardian's home, is receiving services from a psychiatrist, psychologist, or therapist for a mental health-related issue.
  - (M) Whether the proposed guardian, or anyone living in the proposed guardian's home, suffers from a mental illness.
- (3) Failure to provide such statement, or failure to provide truthful answers within the statement, shall subject said person(s) to contempt of court, as it will impair the ability of the Court to establish findings of fact, and ultimately interfere with the administration of justice.

(f) Written Consent. Any person who has legal custody of the child may consent to a guardianship. Such consent must be in writing and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.

(g) Withdrawal of Consent.

- (1) Any consent given under subsection (f) above may be withdrawn by the person who gave consent at any time prior to the hearing of the petition. No reason need be stated and no hearing need be held on such withdrawal. All withdrawals must be in writing and notarized or witnessed by a Clerk of the Court, with the original being filed with the Court.

- (2) If consent is withdrawn after the hearing of the petition and the appointment of a guardian, then the Court shall order a Best Interests Study to be conducted. The Guardian Ad Litem shall perform the study and submit a report with his/her findings with regards to the best interests of the child. The Court shall then take this study into consideration in making its decision.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 213. Guardianship Hearing Procedures**

(a) Time of Hearing. A Guardianship Hearing shall be held within forty-five (45) days of filing of a Guardianship Petition.

(b) Purpose of Hearing. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioner(s), and whether the proposed guardian is suitable to be appointed.

(c) Rights of Parties. During the hearings the Court shall advise the party(ies) of the following basic rights:

- (1) The reason for the hearing.
- (2) Right to counsel at their own expense. The Court shall permit one continuance to secure counsel, unless reasonable efforts are shown to the Court that the parties are actively seeking counsel.
- (3) Right to confront and cross-examine those appearing against them.
- (4) Right to present and subpoena witnesses.
- (5) Right to substitution of judge. The parties shall be notified that a request for substitution of judge must be made before the end of the Guardianship Hearing or this right will be deemed waived unless good cause is shown at a later point in the proceedings.
- (6) Right to a jury trial.

(d) Burden of Proof. The petitioner(s) maintains the burden of proving that he/she is suitable and that the guardianship is in the best interests of the child.

(e) Evidence and Testimony. In determining the best interests of the child and the suitability of the proposed guardian, the Court shall examine each of the following:

- (1) Validity of written consent.

- (2) Length of time of the child has resided with the petitioner(s).
- (3) Special conditions of the child.
- (4) Parent communication with the child.
- (5) Minor's consent to guardianship dependent upon maturity.
- (6) Any report submitted by the Guardian Ad Litem or Child Advocate.
- (7) The Statement of Acts submitted by the proposed guardian.
- (8) Order of preference of placement.

(f) Closed Hearing. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's traditional relatives, and other persons determined to be appropriate by the Court shall be permitted to attend.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 214. Disposition of Petition**

(a) Denial of Petition.

- (1) If the Court finds that the guardianship will not be in the child's best interest, or that all of the requirements of this Act have not been met, it may deny the petition and make any other Order it deems necessary for the child not inconsistent with this Act.
- (2) If the Court determines that the proposed guardian is unsuitable, then the Court shall request that a petition proposing a suitable guardian be filed which may include individuals from the list of successor guardians found in the guardianship petition or other relatives. The Court shall set a date for a hearing to be held within thirty (30) days, and may require the Guardian Ad Litem or Child Advocate to investigate the suitability of a new proposed guardian.

(b) Appointment of Guardian. If the Court is satisfied that the guardianship will be in the child's best interest, the requirements of the Act have been met, and the proposed guardian is suitable, then it may appoint the petitioner(s) as guardian(s) and issue an Order in accordance with this Subchapter.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter K and all sections within renumbered according to new placement in Chapter Two Subchapter D on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER E COURT ORDERS**

### **Section 215. Court Orders Generally**

The Court shall set forth, in the written guardianship order, the following:

- (a) Findings of fact that support the decision of the Court;
- (b) In accordance with the best interests of the minor child, the powers which will be granted to the appointed guardian;
- (c) Any limitations of authority to be placed on the appointed guardian; and
- (d) All duties that the appointed guardian will have.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 216. Management of Property**

(a) In the event that any guardian receives any property (e.g., real property, money, or funds) of any child while acting as guardian, before taking and receiving into custody such money or funds, the Court may require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of his/her trust. The following conditions shall form the part of such bond without being expressed therein.

- (1) To make an inventory of the property of the child that comes into his/her possession or knowledge and to return the same within such time as the Court may order.
- (2) To discharge and manage the property according to the law and in the best interests of the child, and faithfully discharge his trust in relation thereto, and also in relation to the care, custody, and education of the child.
- (3) To render an account (Court created form) of the property of the child and all proceeds or interests derived therefore annually and at such other times as the Court directs.

- (4) At the expiration of the child's trust, the guardian shall settle the child's accounts with the Court, with the child if of the age of majority, or the child's legal representative. The guardian shall deliver all of the property to the person who is legally entitled to possession.
- (5) The funds of any child must be used by his/her guardian solely for the support and education of such child, and shall be expended by the guardian in a reasonable manner according to the circumstances of the child, and in such manner as can reasonably be afforded according to the income and estate of the child.

(b) If determined to be appropriate by the Court, the written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 217. Annual Guardianship Report**

Guardians of the person shall file an annual report (Court created form) on or about the anniversary of the guardianship order or at such other time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and the well-being of the child.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 218. Child Support**

The Court may order child support to the person(s) to whom guardianship is granted under this Chapter if sought by the guardian(s). Guardian(s) of the child must use disbursements for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purposes other than those described in this Act shall subject said person(s) to contempt of court and to criminal and civil penalties or remedies provided by Tribal law. The Court shall order payments to be made directly to the guardian. The guardian and payor shall be responsible for maintaining adequate records of payments made and received. The Court may review the history of payments periodically upon motion of the guardian.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 219. Visitation Rights**

The parent(s) and the child's traditional relatives and clan members shall be granted liberal visitation rights unless deemed inappropriate by the guardian or the Court.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 220. Co-Guardians**

If the Court appoints a guardian of the person or a guardian of the estate, it may also consider appointing the guardian's spouse as a co-guardian in an attempt to better protect the best interests of the child. In addition to having similar guardianship powers, the co-guardian will be subject to all the limitations and will have all of the duties of the petitioning guardian.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 221. Name Change**

A guardian(s) may request the child's name to be changed subject to a determination from the Court that tradition and custom permits such change under the circumstances of the case.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter L and all sections within renumbered according to new placement in Chapter Two Subchapter E on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER F MODIFICATION, REVOCATION AND TERMINATION**

### **Section 222. Judgments Inoperative After Age 18**

No judgment, order, or decree of the Court shall be in effect after the child becomes eighteen (18) years of age.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 223. Motions to Modify Guardianship**

(a) The Court may modify any order or decree, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.

(b) The Court may hold a hearing to modify a guardianship order at any time upon the motion of any of the following:

- (1) The child age sixteen (16) years of age or older.
- (2) The child's parents.
- (3) The guardian of the child.
- (4) The Guardian Ad Litem or Child Advocate.

(c) The motioning party bears the burden of proving that modification of the guardianship order is in the best interests of the child.

(d) The motioning party may seek a modification of a variety of things, including, but not limited to:

- (1) Child support.
- (2) A name change.
- (3) The power to manage the property of the child.
- (4) A change from temporary to permanent guardianship.

(e) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for modification of a guardianship order. At the direction of the Court the Guardian Ad Litem or Child Advocate shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(f) Notice of Modification. Notice of an Order modifying a guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

### **Section 224. Motions to Revoke Guardianship**

(a) Revocation is the voluntary relinquishment of a guardianship by a guardian. The guardianship itself continues with a successor guardian taking over the role of guardian.

(b) The Court may revoke any order or decree, but no revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.

(c) The Court may hold a hearing to revoke a guardianship order at any time upon the motion of the guardian(s).

(d) The motioning party bears the burden of proving that revocation of the guardianship is in the best interests of the child.

(e) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for revocation of a guardianship. At the direction of the Court the Guardian Ad Litem or Child Advocate shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(f) Notice of Revocation. Notice of an order revoking a guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 225. Motions to Remove Guardian**

(a) Removal is the process to remove a guardian from his/her role due to his/her role due to his failure to perform the guardian's duties as set forth in this Act. The guardianship itself continues with a successor guardian taking over the role of guardian.

(b) The Court may order the removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.

(c) The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:

- (1) The child age sixteen (16) years of age or older.
- (2) The child's grandparents or parent(s).
- (3) The child's traditional relatives having a legitimate interest in the particular case.
- (4) The Guardian Ad Litem or Child Advocate.
- (5) Upon motion of the Court.

(d) The motioning party bears the burden of proving that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.

(e) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for removal of a guardian. At the direction of the Court the Guardian Ad Litem



or Child Advocate shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(f) Notice of Removal. Notice of an order removing a guardian shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 226. Motions to Terminate Guardianship Orders**

(a) Termination is the process whereby the entire guardianship is terminated. This may occur upon the child reaching the age of majority, the child becoming emancipated by Court order, or a motion to terminate is granted.

(b) An order granting a guardianship shall be for an indeterminate period.

(c) The Court, upon motion of a party seeking termination of a guardianship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order.

(d) The Court may hold a hearing to terminate a guardianship order at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's parent(s).

(3) The Guardian Ad Litem or Child Advocate.

(e) Termination of a Temporary Guardianship of the Person. The motioning party bears the burden of proving that termination of the temporary guardianship is in the best interests of the child.

(f) Termination of a Permanent Guardianship of the Person. The motioning party bears the burden of proving that the permanent guardian is unsuitable. The motion must set forth the factual allegations that support a finding of unsuitability.

(g) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for termination of a guardianship. At the direction of the Court the Guardian Ad Litem or Child Advocate shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(h) Notice of Termination. Notice of an order terminating guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

(i) Visitation Plan. The Guardian Ad Litem, Child Advocate, or the Court upon its own motion, may deem a visitation plan is necessary if a child has been in a lengthy guardianship. The purpose of said visitation plan will be to allow for a smooth transition from the guardian's home back into the parent's home.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

## **Section 227. Successor Guardian**

(a) Appointment of an Interim Successor Guardian in the Event of Guardian's Death or Sudden Incapacitation. The Court shall select a successor guardian, from the list of possible successor guardians provided in the guardianship petition, upon the death or sudden incapacitation of the guardian. The interim successor guardian shall have the same powers and duties as the appointed guardian, until a new guardian can be appointed pursuant to the procedures described below.

(b) If a guardian dies, is removed by order of the Court, or revokes, the Court, on its own motion or upon receiving a motion of any interested party, shall schedule a guardianship hearing, so as to appoint a competent and suitable person as a successor guardian.

(c) Procedures. The petition for appointment of a successor guardian shall be heard in the same manner and be subjected to the same requirements as provided in this Chapter for an original appointment of a guardian.

(d) Scheduling. Naming of a successor guardian must occur simultaneously with the revocation or removal of the current guardian, unless a suitable guardian cannot be found, at which point the Court shall immediately refer the matter to Seminole Nation Social Services for an intake.

(e) Appointment of Successor Guardian. If the Court determines removal is necessary to protect the best interests of the child, then it shall appoint a successor guardian. The successor guardians will be considered from the list provided in the original petition and from the Guardianship Report submitted by the Guardian Ad Litem or Child Advocate.

(f) Multiple Displacement Assessment. If the Court determines that the best interests of the child are being ignored by multiple guardianships, then it may refer the case to Seminole Nation Social Services to conduct a Multiple Displacement Assessment. The assessment shall not reflect negatively on the tradition and custom of families placing their children with extended traditional relatives.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter M and all sections within renumbered according to new placement in Chapter Two

Subchapter F on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER G APPEALS**

### **Section 228. Court Appeals**

(a) Any interested party to the Court proceeding may appeal a final Court order on a specific legal issue.

(b) Procedure. An appeal to the Nation's Supreme Court may be filed from any order, decree, or judgment of the Court. The Notice of Appeal must be in writing and filed within sixty (60) days from the entry of the order, decree, or judgment appealed from.

(c) Record. For purpose of appeal, a record of proceedings shall be made available to the child, his/her parent(s), guardian(s), the child's counsel, and others upon Court order. Costs of obtaining this record shall be paid by the party seeking the record.

(d) Stay Pending Appeal. The pendency of an appeal shall stay the order or decree appealed from in a guardianship. Where the order or decree appealed from directs a change of guardianship of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

[HISTORY: Enacted by TO 2012-09, July 28, 2012; recodified on June 13, 2016 from Chapter 2 of Title 13A to Title 13B pursuant to authority granted by SNC Title 21, § 203.]

[Subchapter History: Subchapter renumbered from Chapter Four Subchapter N and all sections within renumbered according to new placement in Chapter Two Subchapter G on September 1, 2016 pursuant to authority granted by SNC Title 21, § 203.]

# TITLE 13C ADOPTIONS INDEX

<b>TITLE 13C ADOPTIONS INDEX .....</b>	<b>i</b>
<b>TITLE 13C ADOPTIONS .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>1</b>
Section 1. Citation .....	1
<b>CHAPTER ONE.....</b>	<b>1</b>
Section 101. Definitions .....	1
Section 102. Jurisdiction over Adoption .....	2
Section 103. Purpose of Adoptions .....	3
Section 104. Types of Adoptions .....	3
Section 105. In Camera Determination of Enrollment Eligibility .....	4
Section 106. RESERVED.....	4
Section 107. RESERVED.....	4
Section 108. RESERVED.....	4
Section 109. RESERVED.....	4
<b>SUBCHAPTER A STATUTORY ADOPTIONS .....</b>	<b>5</b>
Section 110. Eligibility for Statutory Adoption .....	5
Section 111. Eligibility to Adopt by Statutory Process .....	5
Section 112. Consent to Statutory Adoption.....	5
Section 113. Voluntary Relinquishment.....	6
Section 114. When Consent of Parents Unnecessary .....	6
Section 115. Notice and Hearing for Adoptions without Consent .....	7
Section 116. Consent of Child .....	8
Section 117. Petition.....	8
Section 118. Investigation.....	9
Section 119. Adoption Hearing.....	10
Section 120. Report and Final Decree of Adoption .....	11
Section 121. Contents of Adoption Order .....	11
Section 122. Effect of Final Decree of Statutory Adoption.....	11
Section 123. Records and Hearing Confidential .....	12
Section 124. Certificates of Adoption .....	13
Section 125. Foreign Decree.....	14

Section 126.	Adoption of Adults.....	14
Section 127.	Appeals .....	14

# **TITLE 13C ADOPTIONS**

## **INTRODUCTION**

### **Section 1.    Citation**

This Title may be cited as the “Seminole Nation of Oklahoma Adoption Act.”

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER ONE**

### **Section 101.   Definitions**

Unless the context otherwise requires, as used in this Title, the term:

- (a)    “Adult” means a person eighteen years of age or over.
- (b)    “Attorney General” means the Attorney General of the Seminole Nation.
- (c)    “Brother” means:
  - (1)    Any male sibling, or
  - (2)    Any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state, would hold the relationship of a sibling with the person in question.
- (d)    “Child” means a person less than eighteen years of age.
- (e)    “Custody” means guardianship of the person.
- (f)    “Department” means the Seminole Social Services Department.
- (g)    “District Court” or “Court” means the Seminole Nation District Court.
- (h)    “Grandparent” means
  - (1)    A biological grandparent.
  - (2)    The brothers and sisters of a biological grandparent, and their spouses.
  - (3)    Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state,

would come within the terms of subparagraphs (1) or (2) of this subsection.

(i) “Juvenile Court” or “Court” means the Juvenile Division of the Seminole Nation District Court, or the Juvenile Court or C.F.R. Court established for other Indian Tribes, or a state Juvenile Court as is appropriate from the context.

(j) “Parent” means either a natural parent or a parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action.

(k) “Stepparent” means a person married to a biological parent, but who is not a biological parent of the child.

(l) “Sister” means

(1) Any female sibling.

(2) Any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to this Title or the laws of any Indian Tribe or state, would have the relationship of a sibling with the person in question.

(m) “Sister-in-law” means the wife of a brother by blood or marriage.

(n) “Termination of parental rights” or “termination of the parent-child legal relationship” means the permanent elimination by court order of all parental rights and duties, including residual parental rights and duties, but not including the child’s right to inherit from the parent’s whose rights have been terminated.

(o) “Traditional custodian” means those relatives of the child other than the parent, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for its support.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

## **Section 102. Jurisdiction over Adoption**

(a) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any person who resides or is domiciled within the jurisdiction of the court, is unmarried, less than eighteen years of age, and either:

(1) A member of an Indian Tribe, or

- (2) Is eligible for membership in an Indian Tribe, and is the biological child of a member of an Indian Tribe, or
- (3) Whose case has been transferred to the Juvenile Division of the District Court from the courts of a state, or Tribe which has assumed jurisdiction over said child.

(b) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any adult Indian who resides or is domiciled within the jurisdiction of the Court.

(c) The Juvenile Division of the District Court shall have concurrent jurisdiction with the court of any other sovereign having lawful authority regarding the adoption:

- (1) By or of any other child or adult who is a bona fide resident of or domiciled within the jurisdiction of the Court, or
- (2) Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile, or
- (3) A member of the Tribe.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203; subsection numbering scheme modified on September 1, 2016 pursuant to authority granted by SNC 21, § 203.]

### **Section 103. Purpose of Adoptions**

The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which, after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Title shall be so recognized by every agency and level of the Government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 104. Types of Adoptions**

There shall be three types of adoptions recognized by this Tribe, namely:

- (a) Statutory adoptions under Tribal law entered into pursuant to Subchapter A of this Chapter.
- (b) Statutory adoptions under the laws of some other Tribe, State, or Nation having jurisdiction over the parties and the subject matter.



(c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Tribal Common Law until such time as the proper procedures for such adoptions are written down as a part of the Tribal Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Tribal Statute, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents' estates.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

**Section 105. In Camera Determination of Enrollment Eligibility**

Whenever a parent, whether biological or adoptive, has expressed a desire that the name of the parent or the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment as a citizen and member of the Tribe, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information in camera, and to enter its order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non- identifying enrollment eligibility criteria. In doing so, the Court shall be provided with a complete Tribal roll for the necessary period(s), and shall seal all records received to maintain their confidentiality of the parties. If the Court determines that such child is eligible for enrollment, it shall enter its order declaring said fact and the Tribal enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines that such child is not eligible for enrollment, it shall enter its order accordingly, and the Tribal enrollment officers shall accept such order as proof of the ineligibility of said child and refuse to enroll the child unless other or further qualifications for enrollment are shown.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

**Section 106. RESERVED**

**Section 107. RESERVED**

**Section 108. RESERVED**

**Section 109. RESERVED**

## **SUBCHAPTER A STATUTORY ADOPTIONS**

### **Section 110. Eligibility for Statutory Adoption**

Every child within the jurisdiction of the Juvenile Division of the District Court at the time a petition for adoption is filed may be adopted subject to the terms and conditions of this Subchapter.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016  
from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC  
Title 21, § 203.]

### **Section 111. Eligibility to Adopt by Statutory Process**

The following persons are eligible to adopt a child pursuant to this Subchapter, and subject to the placement preferences of Section 101 of Title 13A:

- (a) A husband and wife jointly;
- (b) Either the husband or wife if the other spouse is a parent of the child;
- (c) An unmarried person who is at least twenty-one (21) years old;
- (d) A married person who is legally separated from the other spouse and is at least twenty-one (21) years old.
- (e) In the case of a child born out-of-wedlock, its unmarried father or mother.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016  
from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC  
Title 21, § 203.]

### **Section 112. Consent to Statutory Adoption**

- (a) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court by:
  - (1) both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.
  - (2) a parent less than sixteen (16) years of age may give their consent only with the written consent of one of that minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.
  - (3) if both parents be deceased, or if their parental rights have been terminated by judicial decree, then the traditional custodian having physical custody

of said child for the preceding six (6) month period, or a person or the executive head of an agency having custody of the child by judicial decree with the specific authority, granted by the Court, to consent to the adoption of the child.

(b) Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

(c) Any consent given prior to or within ten days after the birth of a child shall not be valid.

(d) Any consent given for the adoption of, or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 113. Voluntary Relinquishment**

Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of Section 112(b)-(d) of this Subchapter, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the Juvenile Division of the court with notice to Social Services, Indian Child Welfare, Attorney General, traditional custodians, and the Parent(s) not a petitioner. The traditional custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 114. When Consent of Parents Unnecessary**

(a) Adoption of a child may be decreed without the consent required by Section 112 of this Subchapter only if the parents, or the traditional custodians having custody if the parents be deceased, have:

- (1) had their parental or custodial rights terminated by a decree of a Court of competent jurisdiction, or

- (2) been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority, or
- (3) for a period of twelve months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:
  - (A) in substantial compliance with any decree of a Court of competent jurisdiction ordering certain support to be contributed, or
  - (B) if no court order has been made ordering certain support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.
- (4) been finally adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority.

(b) In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203 subsection numbering scheme modified on September 1, 2016 pursuant to authority granted by SNC 21, § 203.]

#### **Section 115. Notice and Hearing for Adoptions without Consent**

Before the Court hears a petition for adoption without the consent of the parents as provided by Section 114 of this Subchapter, except proceedings pursuant to Section 114(a)(1), the person having authority to consent to the adoption, or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain and the application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 116. Consent of Child**

Whenever a child is of sufficient maturity and understanding the Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 117. Petition**

A Petition for adoption shall be filed in duplicate, verified by the petitioner(s), and shall specifically state:

- (a) The full names, ages, and places of residence of the petitioner(s), and, if married, the place and date of their marriage.
- (b) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any.
- (c) When and from whom the petitioner(s) acquired or intend to acquire physical custody of the child.
- (d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known.
- (e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known.
- (f) The name used for the child in the proceeding, and, if a change in name is desired, the new name.
- (g) That it is the desire of the petitioner(s) that the relationship of parent and child be established between the petitioner(s) and the child.
- (h) A full description and statement of the value of all property owned or possessed by the child.
- (i) The facts, if any, which excuse the consent of the parents or either of them to the adoption.

(j) Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

(k) The facts which bring the child within the jurisdiction of the court.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

**Section 118. Investigation**

(a) Upon the filing of a petition for adoption, the court shall order an investigation to be made:

- (1) by the agency having custody or legal guardianship of the child, or Department, or in other cases, by the State, Bureau of Indian Affairs, Indian Child Welfare, or Social Services Department.
- (2) by a person qualified by training or experience, certification and designated by the court, and shall further order that a report of such investigation shall be filed with the court by the designated investigator within the time fixed by the court and in no event more than sixty (60) days from the issuance of the order for investigation, unless time therefore is extended by the court.

(b) Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child, including a criminal background check and standard home study including all residents; and any other circumstances and conditions which may have bearing on the adoption and of which the court should have knowledge; and in this entire matter of investigation, the court is specifically authorized to exercise judicial knowledge.

(c) Home studies shall be conducted with at least two visits in the home to evaluate the desire and commitment to adopt, explore the reasons why prospective parents want to adopt, evaluate parenting and discipline style, and shall include a summary and social worker's recommendation, and must also include, but is not limited to:

- (1) Personal and family background-including upbringing, siblings, key events, and what was learned from them;
- (2) Significant people in the lives of the applicants;
- (3) Marriage and family relationships;
- (4) Motivation to adopt;
- (5) Expectations for the child;

- (6) Feelings about infertility (if this is an issue);
- (7) Parenting and integration of the child into the family;
- (8) Family environment;
- (9) Physical and health history of the applicants;
- (10) Education, employment and finances-including insurance coverage and child care plans, if needed; and
- (11) References and criminal background clearances.

(d) The court may order agencies named in Subsection (a) of this Section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.

(e) Where the adopting parent is the spouse of a parent, or in the event that a report, as outlined above deemed adequate for the purpose by the court, has been made within the six months next preceding the filing of the petition for adoption, the court, in its discretion, may waive the making of an investigation and the filing of a report.

(f) Upon the filing of the report, the investigator shall serve written notice upon the petitioner(s) that the report has been filed with the court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioner(s) except upon the consent of the investigating officer and the court, and except to Social Services, Indian Child Welfare, and the Attorney General.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 119. Adoption Hearing**

At any time after the written investigation report has been filed, the court, upon motion or request of the petitioner(s), or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the court. The judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption may enter a final decree of adoption, or may place the child in the legal custody of the petitioner(s) for a period of not more than six months prior to entering a final decree of adoption, or if the court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the court may request the tribal agencies, federal agencies, or other agencies to provide

services to assist in the placement and the care of the child, or, in case of need, refer the matter to the Social Services, Indian Child Welfare, and Attorney General for the purpose of determining whether an involuntary juvenile petition should be filed.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 120. Report and Final Decree of Adoption**

If the court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioner(s), within six months of the child's placement in the custody of the petitioner(s), the court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parent(s). If the court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the court unless it appears to the court that the adoption is in the best interests of the child. In any case where the court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 121. Contents of Adoption Order**

The final order of adoption shall include such facts as are necessary to establish that: the child is within the jurisdiction of the court; eligibility for adoption; the adoptive parent(s) and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the court upon the evidence adduced at the hearings; the new name of the child, if any; and that the relationship of parent and child exists between the petitioner(s) and the child.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 122. Effect of Final Decree of Statutory Adoption**

(a) After a final decree of adoption pursuant to this Subchapter is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parent(s), and the kindred of the adopting parent(s). The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).



(b) After a final decree of adoption pursuant to this Subchapter is entered, the natural parents of the adopted child, unless they are the adoptive parent(s) or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in a Tribe by virtue of his birth to said natural parents.

(c) Unless the traditional custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner as that of a parent, the court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the court deems such visitation in the best interest of the child. The court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 123. Records and Hearing Confidential**

Unless the court shall otherwise order:

(a) All hearings held in proceedings under this Subchapter shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including traditional custodians, representatives of Social Services and/or Indian Child Welfare when deemed necessary by the court, persons whose presence is requested by the parties in private before the court after the exclusion of all other persons, and the counsel for the parties, traditional custodians, Social Services and/or Indian Child Welfare.

(b) All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

- (1) Upon order of the court for good cause shown.
- (2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.
- (3) The traditional custodian and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph.

If the adopting parent request anonymity, by affidavit, the traditional custodians and natural grandparents may have access to the records only by order of the court for good cause shown, and then only if the court deems such request in the best interest of the child.

- (4) For the purpose of obtaining the enrollment of the child with another Indian Tribe, the court may upon request of an enrollment officer of that Tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Tribe subject to the written guarantee, with an undertaking if deemed necessary by the court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents, have, by affidavit, requested anonymity, the court may certify a copy of the record of the case to a judge of the court of the other Tribe for an in camera review only, or allow such judge to review the record in the District Court, in camera, for the purpose of said judge certifying to his Tribe that the child is eligible for membership in that Tribe.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 124. Certificates of Adoption**

(a) For each adoption or annulment of adoption, the court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(b) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the appropriate jurisdiction.

(c) One certified copy of the form certificate, petition, and decree of adoption may be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a judge's certificate showing:

- (1) The original and adoptive name and tribal affiliation of the child,
- (2) The names, addresses, tribal affiliation and degree of blood when known of the biological parents,
- (3) The names and addresses of the adoptive parents,
- (4) The identity of agencies having filed information relating to the adoptive placement,

- (5) Any affidavit of the biological parent requesting that their identity remain confidential.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 125. Foreign Decree**

When the relationship of parent and child has been created by a decree of adoption by any court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by section 122 of this Chapter.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 126. Adoption of Adults**

(a) An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth herein. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

(b) Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

### **Section 127. Appeals**

An appeal to the Supreme Court may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals.

[HISTORY: Enacted by TO 2012-08, July 28, 2012; recodified on June 13, 2016 from Chapter 3 of Title 13A to Title 13C pursuant to authority granted by SNC Title 21, § 203.]

# TITLE 14 FINANCE INDEX

<b>TITLE 14 FINANCE INDEX .....</b>	<b>i</b>
<b>TITLE 14 FINANCE .....</b>	<b>1</b>
<b>CHAPTER ONE OFFICE OF TREASURER .....</b>	<b>1</b>
Section 101. Office of Treasurer .....	1
Section 102. Qualifications and Appointment of the Treasurer and Assistant Treasurer .....	1
Section 103. Bond .....	1
Section 104. Duties .....	1
Section 105. Annual Audit .....	3
<b>CHAPTER TWO FINANCE COMMITTEE .....</b>	<b>4</b>
Section 201. Finance Committee; Qualification; Appointment; Removal; Compensation. ....	4
Section 202. Term .....	4
Section 203. Budget Reports .....	4
Section 204. Functions .....	5
Section 205. Committee Responsible to General Council .....	6
<b>CHAPTER THREE AUDIT COMMITTEE .....</b>	<b>7</b>
Section 301. Establishment .....	7
Section 302. Membership .....	7
Section 303. Terms .....	7
Section 304. Recall of Appointments .....	7
Section 305. Duties .....	7
<b>CHAPTER FOUR TRUST FUND MANAGEMENT BOARD .....</b>	<b>8</b>
Section 401. Trust Fund Management Board .....	8
Section 402. Qualifications .....	8
Section 403. Term .....	8
Section 404. Appointment of Members to Board; Bond; Removal .....	8
Section 405. Duties .....	8
Section 406. Meetings .....	9
<b>CHAPTER FIVE SEMINOLE NATION BUDGET .....</b>	<b>10</b>
Section 501. Purpose .....	10
Section 502. Definitions .....	10
Section 503. Budget .....	10

Section 504.	Budget Preparation .....	10
Section 505.	Budget Director .....	10
Section 506.	Budget Review .....	10
Section 507.	Budget Approval .....	11
Section 508.	Budget Amendment .....	11
<b>CHAPTER SIX COMPLIANCE OFFICER.....</b>		<b>12</b>
Section 601.	Office of Compliance Officer .....	12
Section 602.	Qualifications and Appointment of the Compliance Officer .....	12
Section 603.	Job Classification .....	12
Section 604.	Compliance Officer Responsible to the General Council .....	12
Section 605.	Duties of Compliance Officer .....	12
Section 606.	Removal of Compliance Officer .....	13
<b>CHAPTER SEVEN COMPREHENSIVE BUDGET ACT OF THE SEMINOLE NATION OF OKLAHOMA .....</b>		<b>14</b>
Section 701.	Purpose .....	14
Section 702.	Applicability .....	14
Section 703.	Definitions .....	14
Section 704.	Budget Scope .....	15
Section 705.	Revenue Projections .....	15
Section 706.	Appropriation of Special Revenue Funds .....	16
Section 707.	Appropriation of Enterprise Funds .....	16
Section 708.	Lapsed Appropriations .....	16
Section 709.	Legal Level of Control .....	17
Section 710.	Budgetary Basics of Accounting .....	17
Section 711.	Cost Principles .....	17
Section 712.	Budget Format and Content .....	17
Section 713.	Budget Preparation .....	18
Section 714.	Budget Review .....	19
Section 715.	Budget Approval .....	19
Section 716.	Budget Modification .....	20
Section 717.	Financial Revenue Board .....	21
Section 718.	Emergency Reserve Fund .....	22
<b>CHAPTER EIGHT PROCUREMENT POLICIES.....</b>		<b>24</b>
Section 801.	Purpose .....	24
Section 802.	Applicability .....	24

Section 803.	Definitions .....	24
Section 804.	References to Other Law .....	26
Section 805.	Procurement Management System.....	27
Section 806.	Code of Conduct .....	27
Section 807.	Policy Overview .....	27
Section 808.	Procurement Records .....	29
Section 809.	Procurement Methods.....	29
Section 810.	Types of Contracts .....	31
Section 811.	Multi-Term Contracts.....	31
Section 812.	Required Contract Provisions .....	31
Section 813.	Commercial/Construction Procurement .....	32
Section 814.	Contract Performance and Payment Bonds-Construction Contracts .....	32
Section 815.	Construction Contract Clauses.....	32
Section 816.	Contract Administration. ....	33
Section 817.	Right to Audit-Records.....	33
Section 818.	Legal and Contractual Remedies in Bid Solicitations and Awards.....	34
Section 819.	Compliance with Federal Regulations.....	35
Section 820.	Indian Preference .....	35
Section 821.	Repealed .....	35
Section 822.	Repealed .....	36
Section 823.	Repealed .....	36
Section 824.	Repealed .....	36
Section 825.	Repealed .....	36
Section 826.	Repealed .....	36
<b>CHAPTER NINE PROPERTY MANAGEMENT POLICY .....</b>		<b>37</b>
Section 901.	Purpose .....	37
Section 902.	Applicability .....	37
Section 903.	References to Other Law .....	37
Section 904.	Definitions .....	38
Section 905.	Property Management System .....	39
Section 906.	Policy Overview .....	39
Section 907.	Property Records .....	40
Section 908.	Identifying, Tagging and Marking of Property .....	41
Section 909.	Sensitive Property .....	41

Section 910.	Physical Inventories .....	42
Section 911.	Maintenance .....	42
Section 912.	Lost, Stolen, Damaged or Missing Property .....	43
Section 913.	Loaning or Borrowing Tribal Property .....	43
Section 914.	Excess Property Disposal .....	43
Section 915.	Exchange or Sale of Personal Property .....	44
Section 916.	Abandonment/Destruction of Property .....	44
Section 917.	Inspection Tours .....	45

## **TITLE 14 FINANCE**

### **CHAPTER ONE OFFICE OF TREASURER**

#### **Section 101. Office of Treasurer**

There is hereby established the office of Treasurer of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 70-2 and 70-6, December 5, 1970; codified by TO 91-12, November 16, 1991.]

#### **Section 102. Qualifications and Appointment of the Treasurer and Assistant Treasurer**

The Treasurer of the Seminole Nation of Oklahoma shall be an adult citizen of the Seminole Nation, who is at least one-quarter Seminole, and shall be appointed by the Chief of the Seminole Nation, subject to the approval of the General Council by proper resolution enacted by the General Council, for a term of four years, or until such time as a successor is appointed and confirmed to the office and for as long thereafter as is needed to complete an orderly transition of the duties to the successor. The salary of the Treasurer shall be set forth in the employee salary scale contained in Title 11, Seminole Nation Code of Laws. An Assistant Treasurer shall be appointed in the same manner, and in the absence of the Treasurer shall be given full authority to exercise all duties delegated to the Treasurer.

[HISTORY: Enacted by TO 70-2 and TO 70-6, December 5, 1970; amended and codified by TO-91-12, November 16, 1991; amended by TO 2000-03, June 27, 2000; amended by TO 2005-11, September 24, 2005; amended by TO 2017-13, September 2, 2017.]

#### **Section 103. Bond**

The Treasurer and Assistant Treasurer shall furnish a fidelity bond to the Seminole Nation of Oklahoma in an amount sufficient to insure the faithful performance of the duties of Treasurer, said amount of bond to be at least \$50,000.00, and shall be approved as to form by the Chief of the Seminole Nation.

[HISTORY: Enacted by TO 70-2 and 70-6, December 5, 1970; codified by TO 91-12, November 16, 1991; amended by TO 2000-03, June 27, 2000.]

#### **Section 104. Duties**

The duties of the Treasurer are as follows:

(a) To receive, receipt and account for all funds which come into the custody of the Seminole Nation of Oklahoma.

(b) Unless otherwise expressly provided in Title 8 of the Code of Laws of the Seminole Nation with regard to receipts of an economic development agency, to deposit all funds received, receipted and accounted for the Seminole Nation in such accounts of commercial banks selected by the Treasurer, no later than the first banking day after receipt, provided that



such accounts may include interest bearing checking and savings accounts, money market accounts, sweep accounts, savings certificates, certificates of deposit, any public debt obligations of the United States which are demand time deposits, and any other type of demand time deposit; provided further that a custodial agency agreement or trust agreement required by any bank for any type of deposit listed above shall not be valid unless authorized by Finance Committee resolution or otherwise authorized by General Council resolution, and unless signed by at least two of the following: the Principal Chief, Assistant Chief and Treasurer; provided that in approving and executing such agreements the Finance Committee, Principal Chief, Assistant Chief and Treasurer shall exercise the judgment and care in the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(c) To pay out funds upon authorization by the General Council and upon specific approval of the Chief. All checks shall be signed by the Treasurer and countersigned by the Chief or Assistant Chief. In the event of the incapacity, inability or refusal of the Treasurer to sign approved checks, the checks shall be signed by the Chief and countersigned by the Assistant Chief. The electronic signature of the Treasurer, the Chief, and the Assistant Chief may be used by a specific tribal official, tribal employee, or tribally contracted agent only upon prior written consent and approval from the individual tribal official, so long as the prior written consent is limited in the terms, condition, and complies with this Title, the Seminole Nation's duly adopted budget, and the laws of the Seminole Nation of Oklahoma.

(d) To maintain an accurate, adequate and up-to-date record of all funds received and disbursed, and reconcile the bank statements monthly with the Treasurer's cash record.

(e) To furnish a written report to the General Council at each regular quarterly meeting of all receipts and disbursements during the previous quarter to the end of the month immediately preceding the meeting, and to report cumulative receipts and disbursements for the fiscal year and the cash balance on hand in the bank.

(f) Serve as an ex officio member of the Trust Fund Management Board and assist it by providing it with information necessary to the performance of its functions.

(g) Monitor all reports from the Bureau of Indian Affairs regarding all funds held in trust, maintain familiarity with all BIA regulations and proposed regulations affecting or potentially affecting the Nation's trust funds and make recommendations to the Trust Fund Management Board and to the General Council regarding the BIA's fiduciary duties and fiscal accountability to the Seminole Nation.

(h) Secure or prepare and make available quarterly reports to the Trust Fund Management Board and the General Council of the Seminole Nation of Oklahoma, including financial reports regarding trust funds appropriated for program operating expenses and program benefit distribution, and including financial reports regarding judgment funds held in trust or otherwise unavailable for program use.

(i) Assist the Trust Fund Management Board in the development of an investment plan, subject to General Council approval as required by section 109 of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma; and assist in implementation and oversight of any such plan approved by the General Council, including but not limited to the following activities: monitor activities of any investment firm or firm employed by the Seminole Nation pursuant to written agreement approved by the General Council; act as a contact person for any such firm or firms; and provide all reports provided by said investment firm to the Trust Fund Management Board.

(j) Provide such other fiscal information as the Chief or General Council shall from time to time request.

[HISTORY: Enacted by TO 70-2 and TO 70-6, December 5, 1970; codified by TO 91-12, November 16, 1991; amended by TO 91-13, November 16, 1991; amended by TO 93-21, November 6, 1993; amended by TO 94-03, February 24, 1993; amended by TO 94-5, May 7, 1994, effective June 7, 1994; amended by TO 94-8, June 4, 1994; amended by TO-2008-18, October 27, 2008.]

#### **Section 105. Annual Audit**

(a) All financial accounting records of the Seminole Nation for each fiscal year shall be audited by an independent certified public accountant in accordance with auditing standards generally accepted in the United States of America.

(b) For each fiscal year during which the Seminole Nation receives or expends federal financial assistance, the annual audit of the Seminole Nation shall be in accordance with the provisions of the Single Audit Act of 1984 as amended or its successor.

(c) The Executive Office of the Seminole Nation shall prescribe regulations to implement the provisions of this section and to ensure all annual audits are completed and submitted in a timely manner to the proper authorities.

[HISTORY: Enacted by TO 70-2 and TO 70-6, December 5, 1970; codified by TO 91-12, November 16, 1991; amended by TO 94-3, February 24, 1994; amended by TO 2007-20, December 1, 2007.]

## **CHAPTER TWO FINANCE COMMITTEE**

### **Section 201. Finance Committee: Qualification: Appointment: Removal: Compensation**

(a) The Seminole Nation of Oklahoma shall officially recognize a Finance Committee, which shall be charged and empowered with certain duties and responsibilities as specified herein.

(b) The Finance Committee shall be a five-member board, and each board member shall be a member of the Seminole Nation, with the exception of Seminole Freedmen, and no member shall also serve on other committees, boards, and/or commissions. It shall consist of a minimum of two General Council members of the Seminole Nation of Oklahoma, preferably members with experience in budgeting procedures. Board members who are not Council members shall have experience in budgeting procedures.

(c) The Principal Chief shall appoint the members of the Finance Committee, subject to confirmation by the General Council.

(d) The Assistant Chief and Treasurer shall be ex officio, non-voting members of the Finance Committee.

(e) The Chief of the Seminole Nation of Oklahoma may at any time recall the appointment of any member of the Finance Committee for good cause shown, subject to the approval of a majority of the Council.

(f) Committee members shall receive a meeting stipend from an appropriate fund in accordance with Title 16, section 602 of the Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 78-17, October 28, 1978; as amended by TO 79-1, February 3, 1979; as amended by TO 80-4, June 7, 1980; codified by TO 91-12, November 16, 1991; amended by TO 94-3, February 24, 1994; amended by TO 2005-07, June 4, 2005; amended by TO 2005-11, September 24, 2005; amended by TO 2015-12, December 5, 2015; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 202. Term**

The term of Finance Committee members shall be four years, ending on September 30, 1997 and ending every four years thereafter.

[HISTORY: Enacted by 94-3, February 24, 1994.]

### **Section 203. Budget Reports**

REPEALED.

[HISTORY: Enacted by TO 78-17, October 28, 1978; as amended by TO 79-1, February 3, 1979; as amended by TO 80-4, June 7, 1980; codified by TO 91-12, November 16, 1991; repealed by TO 94-3, February 24, 1994.]

**Section 204. Functions**

(a) Budgetary Function. The Finance Committee shall perform the following budgetary functions:

- (1) Review and evaluate all budgets administered by the Seminole Nation of Oklahoma, unless otherwise provided by law of the Seminole Nation;
- (2) Make recommendations to the General Council regarding Council approval of all budgets reviewed and evaluated by the Committee pursuant to Section 204(a)(1) herein, provided that the General Council shall have authority to approve such budgets unless otherwise provide by law of the Seminole Nation;
- (3) Work closely with the Budget Director on all budgetary processes; and
- (4) Review all budget appropriations prior to General Council submission and make written recommendations to the General Council. In the event the Finance Committee does not have a quorum, the entire Finance Committee has resigned or has been removed and an emergency exists, a budget appropriation may be presented directly to the General Council.

(b) Monitoring Function. The Finance Committee shall perform the following monitoring functions:

- (1) Ensure that the Treasurer, the Principal Chief and the Assistant Chief are bonded;
- (2) Establish, develop and monitor Seminole Nation travel policies and regulations consistent with applicable laws of the Seminole Nation and with any applicable requirements of federal law and regulations;
- (3) Monitor budget compliance and performance by reviewing monthly financial reports required by the Seminole Nation Financial Management Systems Manual for programs administered by the Seminole Nation, notify the Principal Chief regarding any required corrective action, and set a deadline for said corrective action; provided that the Principal Chief shall be responsible for developing a plan of corrective action, working with appropriate personnel to ensure compliance with said plan and providing the Committee with a report regarding corrective action; provided further that the Committee shall notify the General Council if any required corrective action is not taken in a timely manner; and

- (4) Review and make available quarterly Controller's and Treasurer's reports to the General Council of the Seminole Nation of Oklahoma.
- (c) Audit Function. The Finance Committee shall perform the following audit functions:
- (1) Oversee the independent audit engagement, including selecting the independent auditor for the audit required by section 105 herein, provided that the Principal Chief is hereby authorized to execute the audit engagement letter for the auditor selected by the Committee;
  - (2) Review the audited financial statements and the independent auditor's report and submit the independent auditor's report to the General Council for review prior to being submitted to the United States government or any other governmental entity;
  - (3) Ensure that the independent auditor's recommendations contained in the management letter are reviewed by the Principal Chief or his designee, provided that the Principal Chief or his designee shall be responsible for developing a plan of corrective action, working with appropriate personnel to ensure compliance with said plan and providing the Committee with a report regarding corrective action; provided further that the Committee shall notify the General Council if any required corrective action is not taken in a timely manner; and
  - (4) Oversee other investigative matters relating to the financial accountability of the Seminole Nation when requested by the General Council.

[HISTORY: Enacted by TO 78-17, October 28, 1978; as amended by TO 79-1, February 3, 1979; amended by TO 80-4, June 7, 1980; codified by TO 91-12, November 16, 1991; amended by TO 94-3, February 24, 1994; amended by TO 2005-13, October 29, 2005; amended by TO 2006-15(1); December 9, 2006.]

#### **Section 205. Committee Responsible to General Council**

It is to be understood and directed that the Finance Committee will be extended the fullest and best cooperation of all concerned while in the performance of its duties and will be working in the best interests of the citizens of the Seminole Nation of Oklahoma. The Committee will be responsible to the General Council.

[HISTORY: Enacted by TO 78-17, October 28, 1978; amended by TO 79-1, February 3, 1979; amended by TO 80-4, June 7, 1980; codified by TO 91-12, November 16, 1991; amended by 94-3, February 24, 1994.]

## **CHAPTER THREE**

### **AUDIT COMMITTEE**

#### **Section 301. Establishment**

REPEALED.

[HISTORY: Enacted by TO 86-1, March 27, 1986; codified by TO 91-12, November 16, 1991; Repealed by Law 94-3, February 24, 1994.]

#### **Section 302. Membership**

REPEALED.

[HISTORY: Enacted by TO 86-1, March 27, 1986; codified by TO 91-12, November 16, 1991; Repealed by Law 94-3, February 24, 1994.]

#### **Section 303. Terms**

REPEALED.

[HISTORY: Enacted by TO 86-1, March 27, 1986; codified by TO 91-12, November 16, 1991; Repealed by Law 94-3, February 24, 1994.]

#### **Section 304. Recall of Appointments**

REPEALED.

[HISTORY: Enacted by TO 86-1, March 27, 1986; codified by TO 91-12, November 16, 1991; Repealed by Law 94-3, February 24, 1994.]

#### **Section 305. Duties**

REPEALED.

[HISTORY: Enacted by TO 86-1, March 27, 1986; codified by TO 91-12, November 16, 1991; Repealed by Law 94-3, February 24, 1994.]

## **CHAPTER FOUR**

### **TRUST FUND MANAGEMENT BOARD**

#### **Section 401. Trust Fund Management Board**

There is hereby established a Trust Fund Management Board.

[HISTORY: Enacted by TO 93-21, November 6, 1993.]

#### **Section 402. Qualifications**

The Trust Fund Management Board shall be a five member Board consisting of three General Council members and two professional persons who have education or training in finance or a closely related field, and who have experience in financial planning or investment management, and who are at least one-quarter Seminole and a member of the Seminole Nation. No General Council member serving on the Economic Development Committee or on any Economic Development Board established pursuant to Title 8 of the Code of Laws of the Seminole Nation shall be eligible to serve on the Trust Fund Management Board. The Principal Chief and Treasurer are entitled to notice of and may attend and participate in Trust Fund Management Board meetings in an ex officio (non-voting) capacity.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-5,  
May 7, 1994, effective June 7, 1994; amended by TO 2005-11, September 24,  
2005.]

#### **Section 403. Term**

The term of Trust Fund Management Board members shall be four years, ending on September 30, 1997 and ending every four years thereafter.

[HISTORY: Enacted by TO 93-21, November 6, 1993.]

#### **Section 404. Appointment of Members to Board; Bond; Removal**

The Principal Chief shall appoint the members of the Trust Fund Management Board, subject to the approval of the General Council. Board members shall be bonded at a minimum in the amount of \$30,000 each, said bond to be paid by the Seminole Nation. The Chief of the Seminole Nation of Oklahoma may at any time recall the appointment of any member of the Trust Fund Management Board for good cause shown, and subject to the approval of the majority of the Council.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994.]

#### **Section 405. Duties**

The duties of the Trust Fund Management Board shall include the following:

(a) Establish an organized Board structure and adopt by-laws conducive to the orderly conduct of Committee business;

(b) Ensure compliance with applicable federal law, with applicable Seminole Nation law and with the federally approved 1990 Plan for the Use and Distribution of Judgment Funds as set forth in Section 109 of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma;

(c) Review all quarterly reports provided by the Treasurer to the Board, review all other reports and information provided by the Treasurer to the Board, and provide reports and recommendations to the General Council upon request;

(d) Select an auditor pursuant to the Judgment Fund Program's annual budget, provided that the Chief shall have the authority to execute the engagement letter for the auditor selected by the Board; and present the audit report to the General Council;

(e) When so directed by the Chief or the General Council, represent the Seminole Nation of Oklahoma in any pending claim against the United States of America; and

(f) Develop an investments plan, subject to General Council approval, pursuant to Section 109 of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma; and provide oversight of implementation of said investment plan, including monitoring investment firm reports and activities, providing directions to the investment firm or firms with regard to investment transactions consistent with the investment plan, and making recommendations as needed to the General Council.

[HISTORY: Enacted by TO 93-21, November 6, 1993.]

#### **Section 406. Meetings**

The Trust Fund Management Board shall meet monthly, unless the Principal Chief and the Board Chairman agree that a special meeting is necessary for good cause. No member shall be recognized as a member of the Trust Fund Management Board until notice in the form of a General Council resolution approving the appointment has been received by the Board. At least three official Board members shall be present in order to establish a quorum. Voting shall be by roll call vote. Committee members shall receive a meeting stipend from an appropriate fund in accordance with Title 16, Section 602 of the Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 93-21; November 6, 1993; amended by TO 94-5, May 7, 1994, effective June 7, 1994.]



## **CHAPTER FIVE SEMINOLE NATION BUDGET**

**REPEALED JUNE 1, 2013**

**Section 501. Purpose**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 502. Definitions**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 503. Budget**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 504. Budget Preparation**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 505. Budget Director**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 506. Budget Review**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3,  
February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 507. Budget Approval**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3, February 24, 1994; repealed by TO 2013-04, June 1, 2013.]

**Section 508. Budget Amendment**

REPEALED.

[HISTORY: Enacted by TO 93-21, November 6, 1993; amended by TO 94-3, February 24, 1994; repealed by TO-2013-04, June 1, 2013.]

## **CHAPTER SIX COMPLIANCE OFFICER**

### **Section 601. Office of Compliance Officer**

There is hereby established the office of Compliance Officer for the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2004-22, June 5, 2004.]

### **Section 602. Qualifications of the Compliance Officer**

Preference in the hiring of the Compliance Officer of the Seminole Nation of Oklahoma shall be in the following order: (1) an adult member of the Seminole Nation; (2) a member of another tribe; and (3) the most qualified individual. The Compliance Officer shall possess a bachelor's degree in business management, accounting, or finance or an equivalent combination of related education, training or experience and may have experience in Federal program operations.

[HISTORY: Enacted by TO 2004-22, June 5, 2004; amended by TO 2008-13,  
April 26, 2008; amended by TO 2019-07, September 7, 2019.]

### **Section 603. Job Classification**

The Compliance Officer shall be designated as a permanent full-time employee of the Seminole Nation for accounting purposes. The salary of the Compliance Officer shall be set forth in the employee salary scale contained in Title 11 of the Seminole Nation Code of Laws. Based upon the signed and properly approved timesheets, which shall be approved prior to payment by the Treasurer of the Seminole Nation, or by the Executive Assistant to the Principal Chief in the Treasurer's absence.

[HISTORY: Enacted by TO 2004-22, June 5, 2004.]

### **Section 604. Compliance Officer Responsible to the General Council**

REPEALED.

[HISTORY: Enacted by TO 2004-22, June 5, 2004; repealed by TO 2019-07,  
September 7, 2019.]

### **Section 605. Duties of Compliance Officer**

(a) Monitor all reports both Tribal and State and from the Bureau of Indian Affairs regarding all programs for compliance.

(b) Maintain familiarity with all BIA regulations and proposed regulations affecting or potentially affecting the Nation's Fiscal year Budgets and Program compliance or non-

compliance and make recommendations to the General Council regarding the BIA's and Tribe's fiduciary duties and fiscal accountability to the Seminole Nation.

(c) Monitor budget compliance and performance by reviewing monthly financial reports required by the Seminole Nation Financial Management Systems Manual for programs administered by the Seminole Nation. Notify the Principal Chief regarding any required corrective action and set a deadline for said corrective action; provided that the Principal Chief shall be responsible for developing a plan of corrective action. Working with appropriate personnel to ensure compliance with said plan and providing the Compliance Officer with a report regarding corrective action. Provided further that the Compliance Officer shall notify the General Council if any required corrective action is not taken in a timely manner.

(d) Serve as an ex officio member of the Seminole Nation Finance Committee and assist it by providing it with information necessary to the performance of its functions.

[HISTORY: Enacted by TO 2004-22, June 5, 2004.]

**Section 606. Removal of Compliance Officer**

REPEALED.

[HISTORY: Enacted by TO 2004-22, June 5, 2004; repealed by TO 2019-07, September 7, 2019.]

## **CHAPTER SEVEN**

### **COMPREHENSIVE BUDGET ACT OF THE SEMINOLE NATION OF OKLAHOMA**

#### **Section 701. Purpose**

To assist in fulfilling the Seminole Nation's governmental duty to be publicly accountable, an annual budget shall be adopted by the General Council of the Seminole Nation. Such budget shall be designated by the Seminole Nation Comprehensive Budget and shall include a plan of financial operations and other information necessary to enable Seminole Nation members to assess financial accountability.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by  
TO TO-2013-04, June 1, 2013.]

#### **Section 702. Applicability**

(a) Pursuant to Article V, Section e of the Seminole Nation Constitution, the provisions of this chapter shall apply to all entities, agencies, commissions, enterprises, and departments created by an act of the Seminole Nation General Council, approved by an act of the General Council, or formed under the laws of the Seminole Nation.

(b) The provisions of this chapter shall also apply to entities, agencies, commissions, and departments whose annual budget is otherwise required by federal law to be approved by the Seminole Nation General Council regardless of formation under Seminole Nation law.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by  
TO TO-2013-04, June 1, 2013; subsection numbering scheme modified on August  
26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 703. Definitions**

(a) Appropriation. "Appropriation" shall be defined as an authorization or the authority to spend funds from a revenue source for a particular purpose or activity and shall be identified in a budgeted and authorized line item.

(b) Budget Category. "Budget Category" means a grouping of similar object-of-expenditure accounts, e.g., supplies.

(c) Budget Year. "Budget Year" means the fiscal year for which a budget is prepared or being prepared.

(d) Comprehensive Budget. "Comprehensive Budget" means a plan of financial operations, adopted by the General Council providing an estimate of expenditures for a Budget Year and the proposed means of financing the expenditures. It is a formal estimate of the resources that the Seminole Nation plans to spend for specified purposes and activities during the Budget Year.

(e) Enterprise Fund. “Enterprise Fund” means a fund used to account for governmental activities that operate in a manner similar to that of commercial business enterprises. Enterprise Funds are a type of Proprietary Fund.

(f) Finance Committee. “Finance Committee” means the committee established pursuant to Title 14, Section 201 of the Seminole Nation Code of Laws.

(g) Fiscal Year. “Fiscal Year” means the annual period for reporting fiscal operations which begins and ends on dates set by the General Council.

(h) Flexible Budget. “Flexible Budget” means a budget in which most of the budgeted expenses are related to the level of operations.

(i) Fund. “Fund” means an independent fiscal and accounting entity with a self-balancing set of accounts to record cash and other financial resources, together with all liabilities and residual equities or balances, which are segregated for the purpose of carrying on specific activities or attaining certain objectives.

(j) Proprietary Fund. “Proprietary Fund” means a fund used to account for governmental activities that are operated similar to business enterprises, charging customers a fee in return for goods or services; there are two types – Enterprise Funds and Internal Service Funds.

(k) Special Revenue Fund “Special Revenue Fund” means a fund used to account for the proceeds of specific revenue sources that are restricted or committed to spending for specified purposes other than debt service or capital projects.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by TO TO-2013-04, June 1, 2013.]

#### **Section 704. Budget Scope**

The Comprehensive Budget shall include budgets for the Nation’s governmental funds including the General Fund and Special Revenue Funds, and for the Nation’s Enterprise Funds. The Seminole Nation Business and Corporate Regulatory Commission and the Judgment Fund are considered governmental funds for budgetary purposes. The Comprehensive Budget shall also include budgets for the Nation’s business entities. Departmental expenditures by budget category and by funding source shall also be presented in the Comprehensive Budget document.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by TO TO-2013-04, June 1, 2013.]

#### **Section 705. Revenue Projections**

Revenue projections shall be used to estimate resources available for appropriation for the Budget Year. Revenue projections shall be developed in accordance with Section 717 herein and should be made available to participants in the budget process before budgetary decisions are made.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; amended by TO 2007-14, September 1, 2007; repealed and replaced by TO 2013-04, June 1, 2013.]

**Section 706. Appropriation of Special Revenue Funds**

(a) Budgets for Special Revenue Funds established to account for grants and contracts shall be included in the Comprehensive Budget when amounts available for appropriation are determinable. The appropriation will be based on the funding agency award amount. If the Nation is the recipient of any new external grants, contracts or other funding agreements after approval of the Comprehensive Budget, a budget for such grant or contract shall be submitted to the General Council for appropriation, and upon approval, shall be incorporate into the Comprehensive Budget.

(b) While appropriations for grants and contracts are contained in the Comprehensive Budget, they are controlled by funding agency requirements and regulations. All budgets for grants and contracts shall be in accordance with applicable funding agency requirements. Where a Special Revenue Fund is established to account for a grant or contract, no inter-fund transfers are permitted without prior approval of the funding agency.

(c) Where the budget year of a grant or contract overlaps the Nation's budget year, the Budget Officer shall establish procedures for determining the amount of revenues and expenditures to be included in the Comprehensive Budget.

(d) Any grant, contract or agreement with external funding sources which has an unspent balance at any fiscal year end will be considered a continuing appropriation as allowed by the funding agency.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by TO TO-2013-04, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 707. Appropriation of Enterprise Funds**

Flexible budgets shall be used to measure and control Enterprise Funds because of the direct relationship between levels of operations and the revenues earned and expenses incurred. A flexible budget allows higher levels of expenses at higher levels of operating activity. Tribal budgets for Enterprise Funds shall be established at 100% of the total estimated expenses for the fiscal year; however, expenses are limited to revenue collected plus other resources such as inter-fund transfers authorized by the General Counsel.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by TO TO-2013-04, June 1, 2013.]

**Section 708. Lapsed Appropriations**

Except as provided otherwise by the Seminole Nation Code of Laws or General Council Resolution, unobligated appropriations of Tribal revenue and other Tribal resources lapse at fiscal year-end and become void as spending authority. Cash transferred from the General Fund

for operating expenses and program subsidies that is unexpended and unencumbered at fiscal year-end shall be returned to the General Fund for re-appropriation in the next fiscal year's Comprehensive Budget.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by TO 2013-04, June 1, 2013.]

#### **Section 709. Legal Level of Control**

The Legal Level of Control is defined as the level at which the expenditures cannot exceed the appropriations. For all funds (except Enterprise Funds and Special Revenue Funds established to account for grants and contracts) of the Seminole Nation of Oklahoma included in the Comprehensive Budget, the legal level of control will be at the fund level. The legal level of control for grants and contracts will be the individual grant or contract level.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed by TO-2007-20, December 1, 2007; replaced by TO 2013-04, June 1, 2013.]

#### **Section 710. Budgetary Basics of Accounting**

(a) For budget preparation purposes, the Seminole Nation of Oklahoma will prepare each fund's budget on the basis of accounting and measurement focuses consistent with generally accepted accounting principles applicable to the specific fund type.

(b) For all Governmental fund types, encumbrances will be recorded against appropriations for certain commitments during the year to assist in budgetary control.

[HISTORY: Enacted by TO 2007-13, September 1, 2007; repealed and replaced by TO 2013-04, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 711. Cost Principles**

(a) All budgets for federal grants and contracts shall be in accordance with applicable federal legislation and regulations. The Office of the Principal Chief will be the only program budget from which donations and/or contributions can be charged.

(b) Proprietary type funds may charge advertising, depreciation, and other costs related to proprietary type activities.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; amended by TO 2007-14, September 1, 2007; repealed and replaced by TO 2013-04, June 1, 2013.]

#### **Section 712. Budget Format and Content**

(a) Format. The Comprehensive Budget format shall be determined by the Budget Officer in consultation with the Finance Committee.



(b) Content. The Comprehensive Budget shall present a financial plan for the Seminole Nation as a whole. The Comprehensive Budget shall disclose estimated expenditures and anticipated revenues from all sources including grants and contracts when grant awards and contract amounts are determinable. All loan proceeds included in any budget shall require specific approval by the General Council. The Comprehensive Budget shall make appropriations by funds, departments and budget categories. Fund and departmental budgets shall also include a description of the activities performed and services provided by the fund or department and staffing levels for the Budget Year and prior fiscal year. The Comprehensive Budget document shall contain the following elements:

- (1) A budget summary which lists the total estimated revenues by source and the total budgeted expenditures by budget category for the Nation as a whole.
- (2) Departmental budgets which include estimated expenditures itemized by budget category and a summary of estimated expenditures by funding source.
- (3) Fund budgets which include estimated revenues by source and estimated expenditures itemized by budget.
- (4) Supporting justification which explains the budget and describes important features.

[HISTORY: Enacted by TO 2002-05, June 29, 2002; repealed and replaced by TO 2013-04, June 1, 2013.]

### **Section 713. Budget Preparation**

- (a) For each Budget Year, the General Council shall adopt a resolution that establishes:
  - (1) The deadline for the Financial Revenue Board to submit the certification revenues required by Section 717 to the Finance Committee and the General Council.
  - (2) The deadline for submitting the departmental and fund budgets to the Finance Committee for review and recommendation.
  - (3) The date for submitting the Comprehensive Budget to the General Council for final approval.
  - (4) Basic budgetary policy guidelines for the year such as permissible increases in salaries and wages.
- (b) The General Fund budget shall be prepared under the direction of the Principal Chief. Appropriate management personnel shall be responsible for preparing departmental budgets, Proprietary Fund budgets, and Special Revenue Fund budgets for grants and contracts.

(c) The Budget Officer shall have overall responsibility for coordinating the preparation of the Comprehensive Budget. The Budget Officer shall be responsible for:

- (1) Organizing budget procedures including designing forms and publishing an annual budget calendar of key dates in the budget process;
- (2) Supplying data and providing technical assistance to those involved in budget preparation;
- (3) Collecting all budgets from persons responsible for budget preparation and consolidating all departmental and fund budgets into one budget document; and
- (4) Providing technical advice and assistance to the Finance Committee.

[HISTORY: Enacted by TO 2013-04, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 714. Budget Review**

(a) All budgets included in the Comprehensive Budget must be submitted to the Principal Chief and the Finance Committee for review. The Principal Chief, or his designee, shall review all departmental and fund budgets prior to submission to the Finance Committee. Executive Office review shall be documented by the reviewing party's signature and the documentation shall be included on all budgets submitted to the Finance Committee for review and recommendation.

(b) The Finance Committee shall review and evaluate each budget. When a specific department's or fund's budget estimate is unacceptable to the Finance Committee, the Committee shall ask the responsible director to revise the budget and resubmit it. At its option, the Finance Committee may hold open hearings on the proposed budget and may require the person responsible for preparing the budget to interpret and justify the budget.

(c) After completion of the review process, the Finance Committee shall submit recommended budgets to the General Council.

(d) The recommended budgets shall be assembled into a Comprehensive Budget document which is submitted to the General Council for final review and approval.

[HISTORY: Enacted by TO 2013-04, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 715. Budget Approval**

(a) The Finance Committee shall submit the recommended Comprehensive Budget to the General Council for final approval no later than the regular quarterly meeting in September

of each year. The General Council may make revisions at its option. The Comprehensive Budget shall be approved by General Council resolution. The General Council shall approve the Comprehensive Budget prior to the beginning of the Nation's fiscal year. If there are delays in approving the Comprehensive Budget, the General Council should take appropriate action to provide for a continuing appropriation.

(b) Upon approval of the Comprehensive Budget by the General Council, the General Council Secretary shall send a copy of the resolution along with any General Council revisions to the Budget Officer. The Budget Officer shall incorporate any General Council revisions into the Comprehensive Budget and forward copies of the approved budget to the Controller and the Treasurer. The Budget Officer shall be responsible for incorporating the approved Comprehensive Budget into the accounting records.

[HISTORY: Enacted by TO 2013-04, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 716. Budget Modification**

(a) Total appropriations may not be modified or changed except as authorized by the General Council.

(b) The following levels of budget authority for the Nation's Governmental and Enterprise Funds are authorized by the General Council:

- (1) Principal Chief. The Principal Chief is authorized to approve transfer of an unexpended and unencumbered appropriation, or a portion thereof, from one budget category to another within the same department or fund budget, provided that the transfer does not increase salaries and wages and that total cumulative transfers do not exceed ten percent (10%) of that department's or fund's approved budget; and further provided that such revisions to budgets for federal, state or other grants and contracts shall be in accordance with funding agency regulations and shall be initiated by the responsible director. The Principal Chief is also authorized to approve any budget modification resulting from an increase, or decrease, in funding for a federal or state grant or contract, provided that any increase is less than ten percent (10%) of the grant or contract's approved budget, is allocated to approved budget categories excluding salaries and wages, and does not require a Tribal matching contribution.
- (2) Finance Committee. The Finance Committee is authorized to approve any budget modification resulting from Budget Category transfers that cumulatively exceed ten percent (10%) of the total approved department or fund budget, excluding increases to salaries and wages. The Finance Committee is also authorized to approve any budget modification resulting from an increase in funding for a federal or state grant or contract where the increase is ten percent (10%) or more of the grant or contract's

approved budget, provided that the increase is allocated to approved budget categories excluding salaries and wages and does not require a Tribal matching contribution.

- (3) General Council. Budget modifications that authorize transfer of resources from one department or fund to another require General Council approval. The General Council shall also approve any budget modification that increases expenditures for salaries and wages, requires a Tribal matching contribution or changes the scope of work.

(c) The following levels of budget authority for the Nation's business entities established under Title 8 of the Seminole Nation Code of Laws are authorized by the General Council:

- (1) Board of Directors. A business entity's Board of Directors is authorized to approve transfer of an unexpended and unencumbered appropriation, or a portion thereof, from one budget category to another within the same department or fund budget, provided that the transfer does not increase salaries and wages and that total cumulative transfers do not exceed ten percent (10%) of that department's or fund's approved budget.
- (2) General Council. Budget modifications that increase salaries and wages or increase total appropriations require General Council approval. The General Council shall also approve any budget modification that authorizes transfer of resources to other entities or funds.

(d) All Comprehensive Budget modifications shall be reported to the General Council. All supplemental changes to budgets that require General Council approval must first be submitted to the Office of the Principal Chief and Finance Committee in the same manner as provided for in Section 714 Budget Review. Budget modifications that require General Council approval shall be approved by resolution.

[HISTORY: Enacted by TO 2013-04, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 717. Financial Revenue Board**

(a) Establishment. The Financial Revenue Board is hereby established to certify funds and revenues available for the following:

- (1) Expenditure by the Seminole Nation in the Comprehensive Budget; and
- (2) Deposit to the Emergency Reserve Fund Account created pursuant to Title 14, Section 718.

(b) Composition. The Financial Revenue Board shall be comprised of three (3) members which are the following: the Tribal Treasurer, the Director of the Business and

Corporate Regulatory Commission, and the Director of the Seminole Nation Development Authority. Should the Seminole Nation Development Authority be succeeded by another organization of the Seminole Nation, the Chief Executive Officer of the successor organization shall be the third member of the Financial Revenue Board.

(c) Meetings. The Financial Revenue Board shall meet prior to April 1st of each year to establish and define the revenues available for expenditure by the Seminole Nation in the Comprehensive Budget and revenues to be deposited to the Emergency Fund Account. Additionally, the Board shall meet at other times throughout the year as necessary to carry out the duties of the Board.

(d) Reports. Prior to May 1st of each year, the Financial Revenue Board shall submit a written report to the Finance Committee and to the General Council containing the certification of revenues available for expenditure by the Seminole Nation and revenues to be deposited to the Emergency Fund Account. The certification report shall bear the signature of all members of the Financial Revenue Board. Further, pursuant to the duties of the Principal Chief for financial operations of the Seminole Nation found in Title 14, Section 501, the signature of the Principal Chief shall also be affixed to the certification report before transmittal to the Finance Committee and General Council.

[HISTORY: Enacted by TO 2013-04, June 1, 2013.]

#### **Section 718. Emergency Reserve Fund**

(a) Establishment:

- (1) The Emergency Reserve Fund is the common term for the Seminole Nation Reserve Fund allocated by Section 717 of Title 14 of the Seminole Nation Code of Laws.
- (2) The Emergency Reserve Fund is hereby established to receive deposits that exceed one hundred percent (100%) of the final certified estimate made by the Financial Revenue Board of the Seminole Nation for a given year in the Comprehensive Budget.
- (3) Appropriations made from the Emergency Reserve Fund shall be considered special appropriations and will not be considered continuing funding for programs or projects.

(b) Restrictions:

- (1) Up to one-quarter (1/4) of the balance at the beginning of the current fiscal year in the Emergency Reserve Fund may be appropriated, upon a declaration by the Principal Chief that emergency conditions exist, with concurrence of the General Council by a majority vote for the appropriation.

- (2) This section shall not apply to any revenues attributable to federal funding sources, grants or federal appropriations.

(c) Withdrawal. Emergency Reserve Funds can be appropriated with a majority vote of the General Council if one of the following occurs:

- (1) General Fund revenue in the forthcoming fiscal year is less than that of the current fiscal year; or
- (2) An emergency occurs which necessitates the withdrawal of funds, as declared by the Principal Chief pursuant to restrictions contained in Subsection (b) of this Section.

[HISTORY: Enacted by TO 2013-04, June 1, 2013.]

## **CHAPTER EIGHT PROCUREMENT POLICIES**

### **Section 801. Purpose**

The purpose of this Chapter is to establish general policies for the procurement of property, supplies, equipment and services by the Seminole Nation. These general policies set forth standards and provide overall direction for the development of a Procurement Management System for the Seminole Nation.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; Amended by TO 2013-12,  
July 27, 2013.]

### **Section 802. Applicability**

(a) This Chapter applies to all procurement, as defined in Section 803(o), except where expressly excluded.

(b) This Chapter shall apply to the Business and Corporation Regulation Commission created under Title 3A.

(c) This Chapter shall also apply to business enterprises established under Title 8 of the Seminole Nation Code of Laws only to the extent provided for in Title 8, Procurement.

[Legislative Note: See also Title 8 of the Seminole Nation Code of Laws for additional Procurement Laws governing the Seminole Nation's Business enterprises.]

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12,  
July 27, 2013.]

### **Section 803. Definitions**

The words used this Chapter shall have their ordinary meanings unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular provision:

(a) "Bid" means an offer to perform a contract for the performance of work and labor and/or the delivery of goods at a specified price.

(b) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(c) "Change Order" means a written order signed by the Procurement Officer or authorized designee, directing the contractor to make changes as authorized.

(d) "Contract" means all types of agreements, regardless of what they may be called for the procurement or disposal of supplies, services, or construction. The term "contract" does not include agreements, including prime contracts and grants between the Seminole Nation and

federal, state, and or local government for the provision of governmental services to the Seminole Nation and their citizens.

(e) "Contract Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual (written) action of the parties to the contract.

(f) "Contractor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity having a procurement contract with a division, department, office or program of the Seminole Nation.

(g) "Cost-Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Chapter, and fees (if any fees are applicable).

(h) "Data" means recorded information, regardless of form or characteristic.

(i) "Designee" means an individual acting as the duly authorized representative of any corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other private legal entity acting on behalf of the Contractor. The term "Designee" may also be used for individuals acting on behalf of the Seminole Nation.

(j) "Division, department, office, or program of the Seminole Nation" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, corporation or other establishment of the Seminole Nation General Council.

(k) "Employee" means an individual receiving a salary from a division, department, office, or program of the Seminole Nation, whether elected or not, and any uncompensated individual performing personal services for any division, department, office, or program of the Nation.

(l) "Grant" means the receipt, or provision of governmental assistance, whether financial or otherwise, under a program authorized by Seminole Nation, state or federal law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or constructions; a contract resulting from such an award is not a grant but a procurement contract.

(m) "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(n) "May" denotes the permissive.

(o) "Procurement" means the buying, purchasing, renting, leasing, or otherwise acquiring any goods and/or services on behalf of the Seminole Nation. This also includes all functions that pertain to the obtaining of any goods and/or services, including descriptions of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.



(p) "Procurement Officer or authorized designee" means any person authorized to enter into, make written determinations regarding, and administer contracts on behalf of the Seminole Nation. The term also includes an authorized representative acting within the limits of authority.

(q) "Proposal" means an offer to perform a contract for the performance of work and labor and/or the delivery of goods sought.

(r) "Responsible bidder or offeror" means any individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other private legal entity who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(s) "Shall" denotes the imperative.

(t) "Small purchase" means the procurement of supplies or services, the aggregate amount of which does not exceed the simplified acquisition threshold established by Federal Acquisition Regulations.

(u) "Supplies" means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 804. References to Other Law**

The policies are based on the following as they apply:

(a) 25 CFR, Part 276, Uniform Administrative Requirements for Grants, Part 276.12, Procurement Standards;

(b) 2 CFR, Part 225, Cost Principles for State; Local, and Indian Tribal Governments;

(c) 45 CFR, Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, Part 92.36, Procurement;

(d) CFR, Title 48, Federal Acquisition Regulations System;

(e) Section 7(b) of the Indian Self Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b);

(f) The Buy Indian Act, 25 U.S.C. 47.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

### **Section 805. Procurement Management System**

To implement the policies set forth in this Chapter, the Executive Branch of the Seminole Nation shall establish and maintain a Procurement Management System for the Nation. The Principal Chief of the Seminole Nation shall provide overall direction in developing the Procurement Management System and is authorized to prescribe procurement policies and procedures consistent with the policies in this Chapter. The policies and procedures shall be combined in a single document called the Seminole Nation Procurement Manual.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

### **Section 806. Code of Conduct**

(a) All personnel involved in the procurement process shall abide by a written code of conduct. No personnel, officer or agent of the Seminole Nation will participate in the selection, award, or administration of a contract involving a conflict of interest, whether real or merely apparent.

(b) No employee or elected official of the Tribe shall either solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. Unsolicited gifts of less than fifty dollars (\$50.00) intrinsic value will not be violations of the Code of Conduct.

(c) When such financial interest in a firm selected is determined, the General Council shall be presented all pertinent information and shall decide whether or not the financial interest is significant or substantial enough that a conflict of interest exists or could exist if the award was made.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 807. Policy Overview**

(a) The Procurement Management System shall include planning and control procedures with a reporting system that will provide accurate, complete, timely and comprehensive information relating to the aspects of the procurement process. The Procurement Management System shall include procedures for:

- (1) Identifying a need for procurement.
- (2) Selecting the appropriate means of acquiring supplies, equipment, goods, and services.
- (3) Evaluating proposals and/or quotes provided by independent vendors and/or suppliers of the supplies, equipment, goods, and/or services.

- (4) Selecting the appropriate vendor and/or supplier.
- (5) Monitoring the performance of the vendor and/or supplier;
- (6) Ensuring consistent procurement practices;
- (7) Increasing public confidence in the procedures followed in public procurement;
- (8) Ensuring the fair and equitable treatment of all persons who deal with the procurement system;
- (9) Increasing economy in procurement activities and maximizing to the fullest extent practicable the purchasing value of funds;
- (10) Providing safeguards for the maintenance of a procurement system of quality and integrity; and
- (11) Fulfilling public policy objectives such as Indian preference.

(b) Procurement procedures for small purchases, as defined in Section 803(t), should be simplified to the maximum extent feasible to reduce administrative costs and to promote economy and efficiency in contracting.

(c) Procurement transactions shall be made only in accordance with general or specific authorization and executed only by personnel acting within the scope of their authority.

(d) Proposed procurement shall be reviewed in order to avoid unnecessary or duplicative items, and to determine availability of funds needed for the procurement. Consideration shall be given to consolidating or breaking-out procurement to obtain more economical purchases.

(e) Procurement transactions shall be conducted in a manner to provide open and free competition to the maximum extent practical with due regard to other procurement requirements such as Indian preference.

(f) Indian preference may be applied in any procurement award when authorized and shall be applied when required by Federal law.

(g) Solicitations for goods and services shall incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurement, contain features which shall unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define performance or other salient requirements of the procurement.

(h) Solicitations shall clearly set forth all requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(i) Procurement awards shall be made only to responsible entities that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as Indian ownership, contractor integrity, record of past performance, and financial and technical resources.

(j) Any and all bids may be rejected when it is in the Nation's interest to do so.

(k) No purchase shall waive sovereign immunity of the Seminole Nation without prior approval of the General Council or any other entity delegated to waive sovereign immunity in a limited capacity.

(l) A cost or price analysis shall be made in connection with every procurement action involving federal funds, including contract modifications. The method and scope chosen shall vary with the type of procurement action.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 808. Procurement Records**

(a) Procurement records shall be maintained to sufficiently detail the significant history of a given procurement. Records for procurement in excess of the small purchase threshold shall include the following at a minimum:

- (1) the rationale for the method of procurement;
- (2) the selection of contract type;
- (3) the contract selection or rejection; and
- (4) the basis for the contract award.

(b) Appropriate records of small purchase transactions shall also be maintained.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 809. Procurement Methods**

Procurement shall be made by one of the following methods: simplified procurement procedures; sealed bids (formal advertising); competitive proposals; and non-competitive proposals.

(a) Simplified procurement procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property, e.g., purchase cards and purchase orders. Simplified procurement procedures shall be established for small purchases, as defined in Section 803(t). Authorized individuals shall make purchases using the simplified

method that is most suitable, efficient, and economical based on the circumstances of each acquisition.

(b) Sealed bidding is a method of procurement that employs public solicitation of competitive bids and public opening of bids. For sealed bidding to be feasible, the following minimum conditions must be present:

- (1) complete, adequate, and realistic specification or purchase description available;
- (2) two or more responsible suppliers are willing and able to compete effectively for the Nation's business; and
- (3) the procurement lends itself to a firm, fixed-price contract, and selection of the successful bidder can appropriately be made on the basis of price.

(c) Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

(d) Noncompetitive proposals shall be used when the award of a contract is not feasible under simplified procurement, sealed bidding, or competitive proposal procedures. Procurement is made through solicitation from only one source, or after solicitation of a number of sources, it is determined that competition is not adequate. Special steps will be taken to conduct the non-competitive proposals with an Indian-owned business when possible. Circumstances under which a contract may be awarded to noncompetitive proposals shall be limited to the following:

- (1) The item is available from only one responsible source;
- (2) An emergency exists which will not permit a delay which would occur with competitive solicitation;
- (3) When federal funds are involved, the federal agency which approved the grant or contract authorizes noncompetitive proposals;
- (4) After solicitation of a number of sources, competition is determined inadequate; and
- (5) Existing, installed equipment from a previous solicitation must be maintained for uniformity and system usage. (i.e. Computer Systems)

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 810. Types of Contracts**

Subject to the limitations of this Chapter, any type of contract which will promote the best interests of the Seminole Nation may be utilized. However, the Nation will not use a “cost plus a percentage of cost contract,” which is also prohibited by Federal Acquisition Regulations.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended TO-2009-09, June 6, 2009; amended by TO 2013-12, July 27, 2013.]

## **Section 811. Multi-Term Contracts**

Unless otherwise provided by law, a contract may be entered into for any period of time deemed to be in the best interests of the Seminole Nation, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for completion of the contract. Contractual agreements lasting two (2) or more years must be initiated by the responsible office and approved by the Executive Department.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

## **Section 812. Required Contract Provisions**

The following provisions shall be included in all contracts and subcontracts when federal funds are involved:

- (a) In contracts other than small purchases, provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for appropriate sanctions and penalties.
- (b) Provision for termination by the Tribe of all contracts in excess of ten thousand dollars (\$10,000.00) including a description of conditions under which the contract may be terminated, the manner by which it will be terminated and the basis for settlement.
- (c) Requiring compliance with all applicable Federal laws, regulations, and Executive Orders.
- (d) Notice that matters regarding rights to inventions and materials generated under research, exploratory, or experimental contracts are subject to regulations issued by the federal agencies involved, and the Nation.
- (e) Pertinent records of any contractor shall be made available to the federal agencies involved and to the Nation for all negotiated contracts, and that all contractors shall maintain all required records for three (3) years after final payments and audits.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

### **Section 813. Commercial/Construction Procurement**

(a) Provisions for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts. Bid security shall be a bidder's bond provided by a surety company authorized to do business within the State of Oklahoma or a cashier's check.

(b) Provisions for Non-Compliance with Bid Security Requirements. When the invitation for bids requires a bid security, noncompliance with that requirement will result in automatic rejection of the bid.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

### **Section 814. Contract Performance and Payment Bonds-Construction Contracts**

(a) When a construction contract is awarded, the following bonds or security shall be delivered to the Seminole Nation and shall become binding on the parties upon contract execution:

- (1) Performance Bond in the full amount of the contract price;
- (2) Payment Bond for payment of all labor and materials used in construction in the full amount of the contract price; and
- (3) One (1) year Maintenance Bond in the full amount of the contract price.

(b) The Nation may require additional performance and payment bond protection if the contract price is increased.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 815. Construction Contract Clauses**

(a) At a minimum, all construction contracts shall include clauses providing for:

- (1) Adjustments in prices,
- (2) Contract modification,
- (3) Contractor inspection requirements,
- (4) Insurance,
- (5) Permits and responsibilities,
- (6) Time of performance,

- (7) Termination of the contract,
- (8) Lien releases,
- (9) Liquidated damages, and
- (10) Governing law

(b) Whenever a construction contract is funded by annual appropriations and is to extend beyond the initial fiscal year, a clause providing that the Seminole Nation's obligation for contract performance is contingent upon the availability and appropriation of funds for the next fiscal year shall be inserted in the construction contract.

(c) When federal funds are used for construction, additional contract provisions required by applicable federal law or regulation shall also be included in Seminole Nation construction contracts.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 816. Contract Administration**

A system for contract administration shall be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts. Contractor performance shall be evaluated.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 817. Right to Audit-Records**

(a) The Seminole Nation at a reasonable time and place may audit the books and records of any vendor who has submitted cost and/or pricing data to the extent that such books and records relates to an increase or decrease in a contract, change order or contract modification for which cost and/or pricing data is required. Such vendor shall maintain such books and records for a period of not less than three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) The Seminole Nation shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than a firm fixed- priced contract, to the extent these documents relate to the performance of such contract or subcontract. Such documents shall be maintained by the contractor and/or subcontractor for a period of not less than five (5) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]



**Section 818. Legal and Contractual Remedies in Bid Solicitations and Awards**

- (a) Resolution of protested bid solicitations and awards:
  - (1) Right to Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest.
  - (2) Any protest, dispute or claim regarding a solicitation must be presented in writing to the Seminole Nation Appeals Board ("Appeals Board") within ten (10) days of the bid opening. Any protest, dispute or claim regarding the award of any contract must be submitted in writing within thirty (30) calendar days of the award to /the Appeals Board. The Appeals Board will have thirty (30) days to respond to the protest, dispute, or claim.
  - (3) It is the Seminole Nation's policy to try to resolve any protests, disputes, or claims by mutual agreement, keeping in mind the best interests of the Seminole Nation.
  - (4) Authority to Resolve Protests. The Appeals Board is authorized, prior to the commencement of an action in court concerning controversies between the Nation and a contractor which arises under or by virtue of a contract between them, to settle and resolve, with the approval of the Nation's Attorney General and under the direction of the Executive Office, any such controversy.
  - (5) Decision. If the protest is not resolved by mutual agreement, the Appeals Board shall promptly issue a decision in writing. The written decision shall:
    - (A) State the reasons for the action(s) taken; and
    - (B) Inform the protestant of their right to appeal to Tribal Court.
  - (6) Notice. A written copy of the decision shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
  - (7) Stay of Procurement. In the event of a timely protest, the Seminole Nation shall not proceed further with the solicitation or with the award of the contract until a written determination is provided to the protestant. The only exception being that the award of the contract must be made without delay due to the necessity of protecting substantial interests of the Seminole Nation.
- (b) Authority to debar or suspend:

- (1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Seminole Nation may suspend a person from consideration for award of contracts if the Nation determines that there is probable cause to believe that such person has engaged in any activity which might lead to debarment.
  - (2) The suspension shall be for a period not exceeding five (5) years.
- (c) Appeal to Tribal Court
  - (1) The Seminole Nation Tribal Court shall have the jurisdiction to hear and decide appeals of decisions from this Chapter.
  - (2) The aggrieved party shall file his or her written appeal within twenty (20) days of the receipt of a decision.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 819. Compliance with Federal Regulations**

Where procurement involves the expenditure of federal assistance or contract funds, the Seminole Nation shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Chapter.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 820. Indian Preference**

(a) Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by the Seminole Nation.

Indian Preference requirements and applicability in contracting shall be in accordance with the provisions of Title 11A, and with applicable Federal law and regulations.

(b) Indian preference may also be applied in contract awards which are below the minimum threshold for mandatory compliance, but which offer substantial opportunities for Indian employment, training or subcontracting.

[HISTORY: Enacted by TO 2008-07, April 8, 2008; amended by TO 2013-12, July 27, 2013.]

#### **Section 821. Repealed**

[HISTORY: Enacted by TO-2009-09, June 6, 2009; repealed by TO 2013-12, July 27, 2013.]

**Section 822. Repealed**

[HISTORY: Enacted by TO-2009-09, June 6, 2009; repealed by TO 2013-12, July 27, 2013.]

**Section 823. Repealed**

[HISTORY: Enacted by TO-2009-09, June 6, 2009; repealed by TO 2013-12, July 27, 2013.]

**Section 824. Repealed**

[HISTORY: Enacted by TO-2009-09, June 6, 2009; repealed by TO 2013-12, July 27, 2013.]

**Section 825. Repealed**

[HISTORY: Enacted by TO-2009-09, June 6, 2009; repealed by TO 2013-12, July 27, 2013.]

**Section 826. Repealed**

[HISTORY: Enacted by TO-2009-09, June 6, 2009; repealed by TO 2013-12, July 27, 2013.]

## **CHAPTER NINE**

### **PROPERTY MANAGEMENT POLICY**

#### **Section 901. Purpose**

The purpose of this Chapter is to establish policies for the management, use and disposal of all property and goods in the possession of the Seminole Nation of Oklahoma. These general policies set forth standards and provide overall direction for the development of a Property Management System for the Seminole Nation.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 902. Applicability**

(a) This Chapter applies to all property owned or purchased by the Seminole Nation with Tribal funds. It also applies to all property furnished or transferred to the Nation by Federal agencies for use under contracts/grants or acquired with contract/grant funds.

(b) Every entity of the Seminole Nation shall be covered by this policy except for business enterprises established under Title 8 of the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 903. References to Other Law**

The policies are based on the following as they apply:

- (a) Constitution of the Seminole Nation of Oklahoma;
- (b) 25 CFR, Part 276, Uniform Administrative Requirements for Grants, Part 276.11, Property Management Standards;
- (c) 45 CFR, Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, Part 92.31, Real Property and Part 92.32, Equipment; and
- (d) Public Law 93-638 "Indian Self Determination and Education Assistance Act", as amended.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

## **Section 904. Definitions**

(a) "Accountable Property" means Tribal, Federal government, contract or grant funded equipment and related personal property that is being controlled for financial security, protection, and regulatory purposes. This includes capital assets, sensitive property, noncapital controlled property, and property on loan from others.

(b) "Capital Asset" means a tangible or intangible asset that is used in operations, that has an initial useful life of more than one year, and meets the Nation's capitalization policy. Capital assets include, but are not limited to, land, land improvements, buildings, building improvements, equipment, works of art and historical treasures, infrastructure, and intangible property such as copyrights and patents.

(c) "Disposition" means transfer, sale, disposal, removal from service, loss, or theft.

(d) "Excess Property" means property under the control of any department/program that is no longer required or needed for the discharge of the department/program's responsibilities.

(e) "Equipment" means an article of tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of five thousand dollars (\$5,000.00) or more per unit.

(f) "Intangible Property" means property that lacks physical substance, is nonfinancial in nature, and has a useful life of more than one year. Intangible property includes, but is not limited to, rights of way, easements, software, copyrights and patents

(g) "Lost Property" means property missing as a result of storms, accidents, or other circumstances beyond human control when there is no reason to suspect theft.

(h) "Non-expendable personal property" means personal property having a useful life of more than one year and an acquisition cost of five hundred dollars (\$500.00) or more per unit. The property can be complete in itself or a major component of another item of property.

(i) "Personal Property" means property of any kind except real property. Personal property includes equipment, supplies, and intangible property.

(j) "Physical Inventory" means the process of physically accounting for and verifying the identity, location, and status of accountable property.

(k) "Property Custodian" means an individual assigned responsibility for managing and monitoring the use of all accountable property and equipment assigned to or purchased by an individual department or program.

(l) "Real property" means land and things permanently attached to the land such as trees, buildings, stationary mobile homes, crops, and all interests in the property.

(l) "Salvage" means property that has been inspected and determined to have some value beyond its basic material content but is in such condition that it has no reasonable or cost effective prospect of continued use as originally intended.

(m) "Scrap" means property that has been inspected and determined to have no value beyond its basic material content.

(n) "Sensitive Property" means items of property, regardless of value, that require special control and accountability because they are susceptible to theft, misuse, or pose a risk to public safety. Firearms, computer equipment, tools, non-disposable office equipment, and other easily saleable property are considered sensitive property.

(o) "Surplus Property" means excess property that is not required for the needs of any Tribal program, department, or entity.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 905. Property Management System**

To implement the policies set forth in this Chapter, the Executive Branch of the Seminole Nation shall establish and maintain a Property Management System for the Nation. The Principal Chief of the Seminole Nation shall provide overall direction in developing the Property Management System and is authorized to prescribe policies and procedures consistent with the policies in this Chapter. The policies and procedures shall be combined in a single document called the Seminole Nation Property Management Manual.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 906. Policy Overview**

(a) The Property Management System shall ensure control, accountability, maintenance, optimum use, and authorized disposition of all property in the custody of the Seminole Nation. Policies and procedures for the control, protection, use, maintenance, assessment, and disposal of property shall be established and implemented. These policies and procedures shall include provisions to:

- (1) Ensure uniformity in the treatment of personal property in the possession of the Seminole Nation.
- (2) Maintain detailed property records that account separately for each individual capital asset.
- (3) Establish a control system with adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be promptly investigated and fully documented.

- (4) Ensure that adequate control is maintained over items that require special attention because they are sensitive for one or more of the following reasons: legal or contractual provisions; pose a risk to public safety; or, are susceptible to theft.
- (5) Conduct a physical inventory of property and reconcile the results with the property records at least once every two years to verify the existence, current physical condition, and continued need for the property.
- (6) Maintain adequate insurance coverage to insure property against potential casualties or loss.
- (7) Implement adequate maintenance procedures to keep the property in good condition.
- (8) Ensure capital asset disposals, such as sales or retirements, are properly authorized and in accordance with established criteria.
- (9) Ensure removal of sensitive or classified information from property prior to disposal.

(b) The management and disposition of property acquired with Federal awards or furnished by the Federal government shall be in compliance with applicable Federal law and regulations.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 907. Property Records**

(a) Capital assets shall be documented in detailed property records that account separately for each individual asset. At a minimum, property records shall include a description of the property, who holds title, acquisition date and cost, percentage of Federal funds used in the purchase of the property (if any), location, condition of the property, and ultimate disposition data. Property records for depreciable capital assets shall include information regarding estimated useful life, estimated salvage value, annual depreciation and accumulated depreciation.

(b) Property records for equipment shall also include a serial number or tribal identification number.

(c) Property records for sensitive property, as defined in Section 904(n), that does not meet the Nation's capitalization threshold shall include a description of the property, acquisition date and cost, identifying information such as a serial number or tribal identification number, location, and ultimate disposition data. Property custodians shall be responsible for maintaining accurate and timely records that document the assignment of sensitive property to an individual.

(d) Reclassification of property to excess property shall be properly documented in property records.

(e) Procedures shall be established for maintaining property records on a timely basis. To the maximum extent practicable, property records shall be maintained in electronic format.

(f) Access to property records shall be restricted to authorized personnel.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 908. Identifying, Tagging and Marking of Property**

(a) Property and equipment will be tagged and marked for identification. Items that are not physically conducive to tagging, such as small tools, shall be engraved and identified as property of the Seminole Nation of Oklahoma.

(b) All sensitive personal property, as defined in Section 904(n), shall be tagged or marked.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 909. Sensitive Property**

(a) Specific policies and procedures for identifying and controlling sensitive property, as defined in Section 904(n), shall be established. At a minimum, these policies and procedures shall include provisions to:

- (1) Identify items that are considered sensitive property;
- (2) Assign control responsibility at the department/program level;
- (3) Maintain accurate and timely records of individuals who have sensitive items under their control;
- (4) Control receipt, storage, issuance, use and return of sensitive items;
- (5) Ensure that sensitive items, or areas where they are located, are secure;
- (6) Ensure that all sensitive items issued to employees are returned upon employee termination
- (7) Designate who is authorized to reclassify property from sensitive property status.

(b) It shall be the responsibility of the individual having custody of sensitive property to assure that the property is safeguarded from loss or theft and used only for official purposes.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **Section 910. Physical Inventories**

(a) At the close of each fiscal year, every individual assigned responsibility for items of sensitive property shall prepare a report that provides a complete list of those items, along with an explanation of changes from the previous year. The list shall be made available for inspection and verification.

(b) Physical inventories of all capital assets shall be taken at least every two years and the results reconciled with the property records to verify the existence, current use, physical condition, and continued need for the property.

(c) Appropriate controls over inventory procedures shall be established to ensure the validity and accuracy of the information.

(d) The results of the inventory shall be reported to appropriate management personnel. Differences between the physical inventory and property records shall be investigated and resolved.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

## **Section 911. Maintenance**

(a) Maintenance procedures for providing the degree of care necessary to obtain quality performance or service and to ensure the optimum useful life of property shall be established and implemented.

(b) A preventive maintenance program for all motor vehicles owned by the Nation shall be developed and implemented.

(c) Government Services Administration ("GSA") will direct preventive maintenance of GSA leased vehicles. No repair or maintenance should be performed on a GSA vehicle without prior authorization from GSA.

(d) Capital assets critical to effective service delivery shall be identified to help ensure appropriate resource allocation for maintenance of these assets

(e) Condition/functional performance standards shall be established to:

- (1) Provide a basis for planning and budgeting for capital asset maintenance and repair; and
- (2) Determine when maintenance/repair is no longer feasible or warranted and property should be replaced or retired.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

## **Section 912. Lost, Stolen, Damaged or Missing Property**

Property custodians shall immediately report any lost, stolen, damaged, or missing property. All property losses shall be investigated promptly. The result of the investigation shall be documented and reviewed by appropriate management personnel. The individual responsible for the property may be held personally responsible for any missing or damaged property assigned to them dependent upon actual circumstances surrounding the loss. If investigation reveals the loss was willful or due to negligence, the individual shall reimburse the Nation for the replacement value of the property.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

## **Section 913. Loaning or Borrowing Tribal Property**

(a) Property owned by the Seminole Nation may be loaned outside of the Nation with the prior approval of the Executive Department or an individual designated by the Executive Department. All requests to loan or borrow shall be submitted in writing for proper action. The loaning of the Nation's property must comply with contractual and Federal or Tribal regulatory requirements. All property loaned by the Nation must be returned in the same condition in which it was loaned. The borrower of the property will be liable for any damages up to and including replacement cost of the property. The borrower shall report any loss or damage immediately.

(b) Inter or intra departmental loans of property and equipment are permitted with proper authorization.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

## **Section 914. Excess Property Disposal**

(a) All excess real property of the Seminole Nation shall be disposed of by the General Council pursuant to the Constitution and applicable law.

(b) Disposition of personal property that is no longer required or needed for its original acquisition intent (excess personal property) shall be conducted to:

- (1) Maximize reutilization to minimize expenditures for the purchase of new property, when practicable;
- (2) Obtain the optimum monetary return; and
- (3) Reduce management and inventory costs by appropriate use of the abandonment/destruction authority to dispose of unneeded personal property that has no further value to the Nation and no resale value.

(c) Disposition of personal property shall be properly authorized and in accordance with established criteria

(d) Excess personal property that is no longer required for the needs of any Tribal program, department, or entity, but has utility or monetary value, shall be declared surplus property and shall become eligible for donation or sale.

(e) Sales of excess personal property shall be conducted in accordance with Section 915.

(f) Procedures for identifying, reporting, managing, and disposing of excess personal property shall be developed and implemented.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 915. Exchange or Sale of Personal Property**

Occasionally, it may be in the best interest of the Nation to sell or exchange personal property. The following guidelines apply to the sale or exchange of the Nation's personal property.

(a) Sales procedures shall provide for competition to the extent practicable and result in the highest possible return.

(b) Salvage or scrap property, as defined in Sections 904(l) and 904(m), may be sold using procedures that result in the best economical sales return.

(c) If property was purchased with federal funds or provided by a federal agency, approval must be received from the agency prior to sale or exchange. Disposition of such property shall be in accordance with federal requirements

(d) Proceeds from the sale of excess property acquired with Tribal or nonfederal funds shall be returned to the program or department that made the original purchase, if known at the time of the sale. If ownership is unknown at the time of the sale, the proceeds of the sale will be placed in the General Fund for future appropriation by the General Council.

(e) The Nation's Executive Department shall approve all sales or exchanges of personal property.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 916. Abandonment/Destruction of Property**

(a) Property may be destroyed if the property poses a danger to the general public because of health or safety reasons.

(b) Personal property may be abandoned or destroyed if a written determination has been made by an authorized official that the property has no further value to the Nation and has neither utility nor monetary value.

(c) In lieu of abandonment or destruction, personal property that does not constitute a danger to public health or welfare may be recycled or donated.

(d) Abandonment or destruction of property shall be approved by the Executive Department.

(e) Records of property abandoned or destroyed shall be maintained for a minimum of three (3) years.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

#### **Section 917. Inspection Tours**

(a) Property management inspection tours shall be conducted at least once every two years to ensure maximum utilization of property. Property not being fully utilized shall be identified and considered for reassignment, excess declaration, or disposal.

(b) Records shall be kept for each tour including date of tour, participants, areas covered, and findings. Any recommendations as a result of the tour shall be forwarded to the appropriate parties. Follow-up will be conducted as necessary to ensure implementation of recommendations.

[HISTORY: Enacted by TO-2008-10, April 8, 2008; amended by TO 2013-13, July 27, 2013; effective July 27, 2013.]

**SEMINOLE NATION CODE OF LAWS**  
**TITLE 15**  
**INDEX**

<b>SEMINOLE NATION CODE OF LAWS TITLE 15 INDEX .....</b>	<b>i</b>
<b>SEMINOLE NATION OF OKLAHOMA PUBLIC GAMING ACT OF 2011.....</b>	<b>1</b>
<b>SEMINOLE NATION CODE OF LAWS TITLE 15 .....</b>	<b>1</b>
<b>GENERAL PROVISIONS.....</b>	<b>1</b>
Section 1. Title .....	1
Section 2. Authority.....	1
Section 3. Findings .....	1
Section 4. Purposes.....	2
Section 5. Definitions .....	3
Section 6. Interpretation of Act. ....	9
Section 7. Severability .....	9
Section 8. Repeal of Inconsistent Legislation. ....	9
Section 9. Codification. ....	9
Section 10. Effective Date of Act.....	9
Section 11. Proprietary Interest.....	10
Section 12. Classes of Games Authorized. ....	10
Section 13. Regulation of Gaming .....	10
Section 14. Use of Gaming Revenue .....	10
Section 15. Management Contracts.....	11
Section 16. Internal Revenue Code and Other Applicable Federal Laws.....	11
Section 17. Designation of Agent for Service of Process .....	12
Section 18. Compliance with Compact.....	12
Section 19. Consent to Jurisdiction. ....	12
Section 20. Noncompliance .....	13
<b>CHAPTER ONE SEMINOLE NATION GAMING AGENCY AND COMMISSIONERS</b> <b>.....</b>	<b>14</b>
Section 101. Establishment of Seminole Nation Gaming Agency Successor in Interest; Structure.....	14
Section 102. Establishment, Appointment, Term, and Qualifications of the Seminole Nation Gaming Agency Commissioners and Chief Gaming Regulator; Provision for Acting Chief Gaming Regulator .....	16
Section 103. Outside Employment and Activities of the Chief Gaming Regulator. ....	18

Section 104.	Removal or Suspension of Gaming Commissioners .....	18
Section 105.	Duties and Authorities of the Chief Gaming Regulator .....	20
Section 106.	Duties and Authorities of the Seminole Nation Gaming Agency .....	23
Section 107.	Issuing, Revising, and Withdrawing Regulations .....	26
Section 108.	Confidentiality of SNGA Records .....	30
Section 109.	Right to Appeal SNGA Actions .....	31
Section 110.	Appellate Procedure of the Seminole Nation Gaming Commission, Judicial Review: Due Process .....	32
<b>CHAPTER TWO LICENSING .....</b>		<b>39</b>
Section 201.	Gaming License, Permit. or Registration Required.....	39
Section 202.	Exemptions .....	40
Section 203.	Applications and Requirements for Licenses.....	41
Section 204.	Registration of Non-Gaming Vendors.....	57
Section 205.	Applications and Requirements for Class I Gaming Permits.....	58
Section 206.	Applications and Requirements for Work Permits.....	58
Section 207.	Inspection of Premises .....	59
<b>CHAPTER THREE CIVIL AND CRIMINAL ACTIONS, PENALTIES, AND ENFORCEMENT .....</b>		<b>60</b>
Section 301.	Civil Violations .....	60
Section 302.	Criminal Violations .....	63
Section 303.	Civil Sanctions .....	63
Section 304.	Investigations and Examinations of Violations.....	65
Section 305.	Civil Process .....	66
Section 306.	Agent for Service of Process for Gaming Vendors and Financing Vendors.....	68
Section 307.	Production of Records; Hearings .....	68
Section 308.	Price-Fixing and other Trade Restraints Prohibited. ....	69
Section 309.	Protection of Informant Identity.....	70
<b>CHAPTER FOUR .....</b>		<b>71</b>
Section 401.	Responsibilities of SNGE and/or the Gaming Enterprise .....	71
Section 402.	Gaming Requirements .....	72
<b>CHAPTER FIVE REVENUES AND AUDITS .....</b>		<b>75</b>
Section 501.	Audits and Accounts - Responsibility .....	75
Section 502.	Gaming Revenue .....	76

# **SEMINOLE NATION OF OKLAHOMA PUBLIC GAMING ACT OF 2011**

## **SEMINOLE NATION CODE OF LAWS**

### **TITLE 15**

#### **GENERAL PROVISIONS**

##### **Section 1.     Title**

This Act shall be cited as the “Seminole Nation of Oklahoma Public Gaming Act of 2011.”

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

##### **Section 2.     Authority**

The Nation is empowered to enact this Act pursuant to the Constitution of the Seminole Nation, Art. V, Sec. (a) & (d).

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

##### **Section 3.     Findings**

The General Council finds that:

(a)     The present needs of the Seminole people include employment and training, health care, education opportunities, nutrition, mental health, juvenile services, housing, planning and development, legal services, senior citizen programs and social services which are not presently being met in sufficient quantity by United States government agencies;

(b)     The Seminole Nation desires to be self-sufficient in its internal affairs, as reliance upon federal resources has been adverse to the quality of life within this nation in both the recent and far past;

(c)     The Seminole Nation wishes to promote its economic development, self-sufficiency, and capacity for self-governance;

(d)     The regulation of public gaming within the Seminole Nation is in the interest of the Seminole people and their health and welfare;

(e)     Public gaming operations have been introduced to the Seminole Nation, and it is of vital interest to the public health, safety and welfare of the Seminole people that the Nation regulated public gaming in a manner commensurate with the interests of the Seminole people; and

(f) The Indian Gaming Regulatory Act of 1988, 251 U.S.C. §2701 et seq., recognizes the authority of the Seminole Nation to regulate gaming within its borders.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

#### **Section 4. Purposes**

The purposes of this Act are to:

(a) Promote the public health, safety, welfare, and standard of living of the Seminole people by regulation of public gaming activities and to generate revenue for self-perpetuation and essential governmental services;

(b) Promote economic development, self-sufficiency, and a strong government for the Seminole Nation;

(c) Establish the legal and regulatory framework for the regulation, control, and licensing of all classes of gaming activities within the jurisdiction of the Seminole Nation, including Class I, II, and III gaming activities;

(d) Establish the powers and authority of the Seminole Nation Gaming Agency, as successor in interest to the Seminole Nation Gaming Commission, and create the position of Chief Gaming Regulator to supervise, direct, and lead the SNGA, which shall serve as the primary regulator of the Seminole Nation's gaming activities, and which shall have the power and authority to:

- (1) License the Nation's gaming facilities, employees, vendors, and financiers;
- (2) Monitor and regulate all gaming activities conducted within the jurisdiction and authority of the Nation;
- (3) Adopt and implement such rules and regulations as may be necessary to carry out the purposes of this Act;
- (4) Conduct investigations and sanction violations of the gaming laws and regulations of the Seminole Nation;
- (5) Conduct hearings; and
- (6) Establish a schedule of fees and monetary penalties;

(e) Ensure that Seminole Nation gaming laws are fully and fairly enforced in accordance with principles of fundamental fairness and due process of law in relation to all persons involved in gaming activities under the jurisdiction of the Nation; that the Seminole Nation's gaming activities are conducted fairly and honestly by both gaming operators and



players; and that such gaming activities remain free from corrupt, incompetent, unconscionable, and dishonest persons and/or practices;

(f) Establish as a matter of law that a Seminole Nation License to operate a gaming activity is a revocable privilege, not a right or property interest;

(g) Ensure that such gaming activities are carried out in conformity with the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §2701 et seq. and any Tribal-State Gaming Compact with the State of Oklahoma as may presently be in effect or be executed hereafter;

(h) Ensure that revenues from the operation of the Seminole Nation's regulated gaming activities are used only for authorized purposes; and

(i) Ensure that the Seminole Nation is the primary beneficiary of the revenues derived from the Nation's gaming activities.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 5. Definitions**

For the purpose of this Act -

(a) Chief. "Chief of or Principal Chief" means the Principal Chief of the Seminole Nation.

(b) Chief Gaming Regulator. "Chief Gaming Regulator" means the official who directs the SNGA on a daily basis and performs the duties of the Chief Gaming Regulator established by this Title, including implementing this Act which governs the actions of any gaming operations licensed under this Act.

(c) Collateral Agreement. "Collateral Agreement" means any contract, whether or not in writing that is related, either directly or indirectly, to a management contract or to any rights, duties or obligations created between a Nation (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

(d) Commissioner. "Commissioner" means SNGA Gaming Commissioner.

(e) Commission. "Commission" shall mean the SNGA Commission.

(f) Compact. "Compact" means an effective Tribal-State Gaming Compact between the Seminole Nation and the State of Oklahoma pursuant to the terms and conditions of 25 U.S.C. §2710(d).

(g) Covered Game. "Covered Game" shall mean the following games conducted in accordance with the standards, as applicable, set forth in Sections 11 through 18 of the State-

Tribal Gaming Act that sets forth the terms of the Compact between the Nation and the State of Oklahoma, amendments or successor statutes thereto: an electronic bonanza-style bingo game, an electronic amusement game, an electronic instant bingo game, nonhouse-banked card games; any other game, if the operation of such game by a tribe would require a compact and if such game has been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the State-Tribal Gaming Act. For purposes of this Title, the term “Covered Game” shall also mean any Class I or Class II operated in the Nation’s Jurisdiction for which no compact is required with the State of Oklahoma.

(h) Covered Game Employee. “Covered Game Employee” shall have the same meaning under this Title as defined under the Compact.

(i) Gaming. “Gaming” means all forms of Class I, Class II, or Class III Gaming, as defined in IGRA (25 U.S.C. §2703(6-8)).

(j) Gaming Enterprise. “Gaming Enterprise” means the entity established to manage and operate the Nation’s gaming and gaming-related activities under Title 8 of the Seminole Nation Code.

(k) Gaming Facility. “Gaming Facility” means each location at which the Gaming Enterprise operates Covered Games authorized under IGRA or the Compact and Title 15 of the Seminole Nation Code of Laws.

(l) Gaming Financer. “Gaming Financer” means a person or entity providing financing to the Enterprise as described in Part 10.C.1 of the Compact and excepting persons or entities excluded under Part 10.C.3 or Part 10.C.4, who requires a License under the terms of the Compact. Provided, this term shall also include any person or entity employed, retained, or engaged to procure financing or provide development services.

(m) Gaming Goods. “Gaming Goods” means any items or supplies used for or in conjunction with games and gaming and the security for such games and shall include, but not be limited to, the Games themselves (including gaming machines, gaming tables, cards, chips, dice, etc.); machines that count, weigh, or otherwise are used to process currency, chips, gaming tickets, gift cards, and other items of monetary value on the gaming floor or in backroom operations including currency and ticket counters, ticket redemption units, ticket and currency kiosks, and bill breakers; software and computer hardware that controls such games and/or that monitors or accounts for money and tickets for one or more games or that tracks players; security equipment such as surveillance cameras, recording equipment, key security systems, etc.; and the parts and supplies for such games, machines, items, and systems.

(n) Gaming Operation. “Gaming Operation” means the Gaming Enterprise together with the Gaming Enterprise Board, employees, agents and the gaming facilities.

(o) Gaming Vendor. “Gaming Vendor” means any person or entity that:

- (1) Manufactures, sells, or supplies gaming equipment any gaming equipment or parts or provides goods, or services for the gaming activities at the

Gaming Enterprises, including accounting services and financing, but excluding certified public accountants or attorneys and their firms to the extent that they are providing services covered by their professional licenses;

- (2) Provides any other goods and services to or related to the Gaming Operation which person or entity is determined by regulations authorized under this Title to be a Gaming Vendor; or
- (3) Otherwise meets the description under Part 10.B.1 of the Compact for requiring a License; and
- (4) Provides development and/or construction services in relation to a gaming facility licensed or required to be licensed by this Title.
- (5) A person or business entity engaged by the Seminole Nation under a Management Contract is also a Gaming Vendor.

(p) General Council. “General Council” means the General Council of the Seminole Nation.

(q) Hearing de Novo. “Hearing De Novo” means a new hearing or a hearing for the second time contemplating an entire trial in the same manner in which the matter was originally heard with, in addition, a review of previous hearings.

(r) IGRA. “IGRA” means the Federal Indian Gaming Regulatory Act of 1988, 25U.S.C. §2701, et seq., as amended.

(s) Indian Lands of the Seminole Nation. “Indian Lands of the Seminole Nation” means all lands of the Seminole Nation that meet the definition of Indian lands as defined in 25 U.S.C. §2703(4).

(t) Key Employ. “Key Employee” means:

- (1) A person who performs one or more of the following functions at a Gaming Enterprise:
  - (A) Bingo Caller;
  - (B) Counting room supervisor;
  - (C) Chief of security;
  - (D) Custodian of gaming supplies or cash;
  - (E) Floor manager;
  - (F) Pit Boss;

- (G) Dealer;
  - (H) Croupier;
  - (I) Approver of credit; or
  - (J) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- (2) A person or entity that is a Covered Employee;
  - (3) If not otherwise included, any other person employed by the Gaming Enterprise whose total cash compensation is in excess of \$50,000 per year;
  - (4) If not otherwise included, the four most highly compensated persons in the Gaming Enterprise;
  - (5) Any person employed by SNGE and/or the Seminole Nation Gaming Enterprise who has substantial responsibilities related to the Gaming Enterprise; or
  - (6) Any person or entity providing services requiring: 1) access to sensitive or restricted areas of a gaming facility; 2) actual or remote access to a gaming system, gaming accounting system, and/or player tracking system; 3) access to the internal components of gaming machines; and/or
  - (7) Any other person or entity designated a Key Employee by regulation issued pursuant to this Title.

(u) License. "License" means a revocable privilege granted by authority of the Seminole Nation Gaming Agency to do an act or series of acts, which without permission, would be unlawful under this Act. It is a permission granted by the SNGA to an instrumentality of the Seminole Nation to operate gaming establishments or to a person or entity to be employed by or to conduct business with such gaming establishments under the jurisdiction of the Seminole Nation.

(v) Licensee. "Licensee" means the holder of a License issued by SNGA under this Title.

(w) Management Contract. "Management Contract" means any contract, subcontract, or agreement collateral thereto between the Seminole Nation and a third-party contractor or between a Seminole Nation contractor and a subcontractor if such contract or agreement provides for the management of all or part of a Gaming Enterprise. Any person or entity operating under a Management Contract shall also be deemed a Gaming vendor under this Title.

(x) Nation. "Nation," when used alone or as "Seminole Nation" means the Seminole Nation of Oklahoma.

(y) National Indian Gaming Commission or NIGC. “National Indian Gaming Commission,” or “NIGC,” means the federal agency established by the IGRA.

(z) Net Win. “Net Win” shall mean the total amounts wagered less payouts/winnings to patrons.

(aa) Net Revenues. “Net Revenues” shall have the same meaning as that defined in Section 2703(a) of the Indian Gaming Regulatory Act.

(bb) Non-gaming Vendor. “Non-gaming Vendor” means a provider of services or goods to a Gaming Enterprise or any entity providing administrative or other services to or on behalf of the Gaming Enterprise that are not directly related to or used in connection with gaming activities or the handling, processing, and/or accounting of cash or cash equivalents from the gaming activities, but excluding goods and services provided by a publicly regulated utility company. Examples of such goods and services include, but are not limited to, providers of: uniforms or laundry services; food, beverages and goods; cleaning supplies and services; general purpose equipment or items such as light bulbs, vacuum cleaners, and decorations; and entertainment services. Goods and services provided by Non-gaming Vendors explicitly exclude goods and services provided by Gaming Vendors.

(cc) Patron. “Patron” means any person on the premises of a gaming facility for the purpose of playing games authorized under IGRA or the Compact.

(dd) Patron Dispute. “Patron Dispute,” for purposes of this Act, shall mean a dispute between a patron and a Gaming Enterprise, such as a dispute over the amount of a prize or a dispute over access of the Gaming Enterprise or a game within the Gaming Enterprise, but shall not mean a tort claim for personal injury or property damage against a Gaming Enterprise.

(ee) Primary Management Official. “Primary Management Official” means:

- (1) The person having management responsibility for a management contract;
- (2) Any person employed by the Gaming Enterprise, Gaming Facility, and/or SNGE or under a contract who has authority to:
  - (A) Hire, fire, direct, supervise, and/or discipline employees of a Gaming Enterprise, Gaming Facility, and/or SNGE or of the contractor performing services for the Gaming Operation;
  - (B) Establish, approve, and/or implement policy for the Gaming Operation;
  - (C) Supervise, direct, or operate gaming activities, including any person with authority to direct the placement or removal of games on or from a Gaming Facility; and
  - (D) Supervise, direct, or oversee the financial affairs and activities of the Gaming Operation; and

- (3) The chief financial officer or other person who has financial management responsibility as an employee of SNGE and/or the Gaming Enterprise, or under a contract providing services to the Gaming Enterprise.

(ff) Principal. “Principal” means, with respect to any Gaming vendor or Gaming Financer, its sole proprietor or any partner, trustee, beneficiary, or shareholder holding five percent or more of its beneficial or controlling ownership, either directly or indirectly, or any officer, director, primary management employee including its Chief Financial Officer or other person who has financial management responsibility as an employee or under contract, or key employee thereof.

(gg) Secretary. “Secretary” means the Secretary of the Department of the Interior.

(hh) Seminole Nation Court. “Seminole Nation Court” means a court established by the Seminole Nation to exercise criminal and/or civil jurisdiction over actions arising in Indian Country within the Seminole Nation pursuant to the Seminole Nation Constitution and Code of Laws.

(ii) SNGA. “SNGA” means the Seminole Nation Gaming Agency established pursuant to this Act.

(jj) SNGA Gaming Commissioner. “SNGA Gaming Commissioner” means the official who directs the SNGA, and the Chief Gaming Regulator, and hears appeal and performs the duties of the Commissioner established by this Title, including issuing regulations implementing this Act which govern the actions of any gaming operations licensed under this Act

(kk) SNGE. “SNGE” means the Seminole Nation Gaming Enterprise including its executive director, employees, agents, its employees and agents as more particularly described under Title 8 of the Seminole Nation Code, or any successor in interest.

(ll) State Compliance Agency (or SCAI). “State Compliance Agency” (or “SCA”) shall mean the State of Oklahoma’s Office of State Finance.

(mm) This Title. “This Title” (or, “this Title”) used in the text of this Title means Title 15 of the Seminole Nation Code of Laws, as it may, from time to time, be amended or the Title renumbered.

(nn) Tribal Compliance Agency (TCA). “Tribal Compliance Agency” (TCA) under the Compact shall be the Seminole Nation Gaming Agency.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-1, March 7, 1992; amended by TO 94.2, February 24, 1994; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 6. Interpretation of Act**

The provisions of this Act, being necessary for the welfare of the Seminole Nation and its inhabitants, shall be liberally construed to affect the purposes and objects thereof. Section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section hereof.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 7. Severability**

The provisions of this Act are severable and if any part or provision hereof shall be held void by a court of competent jurisdiction, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 8. Repeal of Inconsistent Legislation**

This Act revokes, supersedes, and replaces both the Seminole Nation Ordinance 91-12, and Seminole Nation Ordinance 09-08, as amended, in their entirety. All other laws of the Seminole Nation inconsistent with the provisions of this Act and existing as of the effective date of this Act are hereby repealed, including all inconsistent laws, ordinances, and resolutions. Repeal by this Act of any law, ordinance, or resolution shall not have the effect of reviving any prior law, ordinance, or resolution heretofore repealed or suspended by such repealed code.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 94-2, February 24, 1994; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 9. Codification**

This Act is hereby codified as Title 15 of the Seminole Nation code of Laws and may be recodified as necessary to the extent the Seminole Nation Code of laws is recodified.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 10. Effective Date of Act**

This Act shall become effective as a replacement for the Seminole Nation Ordinance 91-12, as

codified as Title 15 of the Seminole Nation Code of Laws and any amendments to Title 15 enacted prior to the date of this Act immediately upon its approval by the Chairman of the NIGC.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 11. Proprietary Interest**

The Seminole Nation shall have sole proprietary interest and responsibility for the conduct of gaming activities conducted on the Indian Lands of the Seminole Nation.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 12. Classes of Games Authorized**

(a) Class I, II, and III gaming are hereby authorized to be conducted upon Indian Lands of the Seminole Nation, provided that Class III gaming shall be permitted only if, and only to the extent, authorized by a duly executed Tribal-State Gaming Compact(s) and/or amendment(s) thereto between the Nation and the State of Oklahoma approved by the Secretary of the Department of the Interior.

(b) No Class III gaming activities may be conducted on Indian Lands of the Seminole Nation in the absence of a valid, approved Compact or in contravention of such Compact.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 13. Regulation of Gaming**

All gaming activities of the Seminole Nation and all related activities undertaken in connection with such gaming activities shall be regulated by the Seminole Nation Gaming Agency, an independent regulatory agency of the Seminole Nation.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; Superseded by TO 2011-11, October 29, 2011; NIGC approved February 9 , 2012.]

### **Section 14. Use of Gaming Revenue**

(a) Net revenues from Class II and Class III gaming shall be used only for the following purposes:

(1) To fund the Nation's government operations and programs;



- (2) To provide for the general welfare of the Nation and its members;
- (3) To promote the Nation's economic development activities;
- (4) To donate to charitable organizations; and
- (5) To help fund operations of local government agencies.

(b) Restrictions. The Nation's gaming revenues may be expended for the purposes specified in subsection (a) of this Section 14 only if administered by a governmental department, division, component, agency, and/or other governmental instrumentality of the Seminole Nation as authorized by the Nation's law(s) and/or as appropriated by the General Council. The Nation's gaming revenues shall not be subject to distribution to individual members on a per capita basis, provided that, nothing in this section shall be construed to prevent the Nation from disbursing grants, scholarships, or providing other benefits or services administered by the Nation to qualified members. Provided further, nothing in this Act shall be construed to limit the authority of the Seminole Nation or any governmental instrumentality of the Seminole Nation to make any purchase of any kind or to save, deposit, or invest any portion of the Nation's gaming revenues in any authorized savings and/or investment fund, account, or program.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 15. Management Contracts**

No management contract may be executed by or on behalf of the Seminole Nation with any third-party unless authorized by a duly adopted resolution of the General Council and in full compliance with all applicable provisions of IGRA, particularly, 25 U.S.C. Section 2711 and regulations issued pursuant thereto.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 16. Internal Revenue Code and Other Applicable Federal Laws**

In addition to its authority to enforce compliance with this Title and regulations issued hereunder, the SNGA is hereby delegated the authority to monitor, enforce, and sanction violations of all federal laws and regulations applicable to the Nation's gaming activities including, without limitation, the pertinent provisions of Title 25 of the United States Code and the Code of Federal Regulations, the Internal Revenue Code and Title 31 of the U.S. Code and Code of Federal Regulations, among others.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 17. Designation of Agent for Service of Process**

The Chief Gaming Regulator of SNGA is hereby designated as agent for service of any official determination, order, or notice of violation of this Title or of IGRA. The address, phone number, and fax number of the Chief Gaming Regulator shall be published and continuously made available on the website of the SNGA and/or Nation. The Chief Gaming Regulator shall promptly report and provide copies of any such service to the Chief and/or General Council as appropriate. Should the Chief Gaming Regulator be unavailable or the position vacant, any actively and validly appointed SNGA Gaming Commissioner shall be alternatively designated as service agent.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 18. Compliance with Compact**

The SNGA is hereby delegated the authority to monitor, enforce, and sanction violations of the terms and conditions of the Nation's gaming Compact(s).

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 19. Consent to Jurisdiction**

(a) Consent. Any person who:

- (1) Applies for and/or is granted a License under this Title;
- (2) Applies for employment in any Gaming Facility Licensed and/or regulated under this Title;
- (3) Enters into any contract, engagement, or agreement related to gaming regulated under this Title; or
- (4) Participates in any gaming activity authorized by this Title or enters onto the premises of any Gaming Facility licensed under this Title is subject to the civil jurisdiction of the Nation, SNGA, and the Seminole Nation Court and a person's performance of any of these acts shall constitute consent to a commercial transaction and consent, waiver and ratification of the Nation's exercise of such jurisdiction.

(b) Consent. Any Native American who:

- (1) Applies for and/or is granted a License under this Title;
- (2) Applies for employment in any Gaming Facility Licensed and/or regulated

under this Title;

- (3) Enters into any contract, engagement, or agreement related to gaming regulated under this Title; or
- (4) Participates in any gaming activity authorized by this Title or enters onto the premises of any Gaming Facility licensed under this Title is subject to both the civil and criminal jurisdiction of the Nation, SNGA, and the Seminole Nation Court; and a person's performance of any of these acts shall constitute consent to a commercial transaction and consent, waiver and ratification of the Nation's exercise of such jurisdiction the Nation's exercise of such jurisdiction.

(c) Limitation. Nothing in this Section shall limit the jurisdiction of the Nation, the SNGA, or the Seminole Nation Court under any circumstances not explicitly contemplated in this Title nor shall this Title be construed to waive, in whole or in part, the Nation's sovereign immunity from unconsented suit.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 20. Noncompliance**

Failure to comply with any of the requirements of this Title, or the regulations promulgated hereunder shall constitute a violation of this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **CHAPTER ONE**

### **SEMINOLE NATION GAMING AGENCY AND COMMISSIONERS**

#### **Section 101. Establishment of Seminole Nation Gaming Agency Successor in Interest: Structure**

(a) SNGA Established. In order to provide for comprehensive and effective regulation of the Nation's Gaming activities, there is hereby established the Seminole Nation Gaming Agency.

(b) Successor in Interest to the Seminole Nation Gaming Commission. The Seminole Nation Gaming Agency shall be the successor in interest to the Seminole Nation Gaming Commission. All staff, assets, liabilities and contractual obligations of the Seminole Nation Gaming Commission are hereby transferred to and assumed by the Seminole Nation Gaming Agency, and nothing in this Act shall be construed to alter any lawful contractual obligations authorized by the Seminole Nation Gaming Commission under prior law. All regulations approved by the Seminole Nation Gaming Commission approved under prior law shall continue in force under SNGA until amended or withdrawn by the SNGA Gaming Commissioners with input from the Chief Gaming Regulator in accordance with this Title.

(c) Organizational Structure. SNGA shall have separate divisions for Licensing, Compliance, Audit, and Surveillance, and such other units as necessary, which shall report to the Chief Gaming Regulator and which shall have the responsibilities set out in this subsection and such other responsibilities as may be assigned to them by the Chief Gaming Regulator or the SNGA Gaming Commissioners.

- (1) Licensing Division. The Licensing Division shall have responsibility for administering the licensing, registration and permitting programs of the Seminole Nation for gaming facilities, individuals, and entities pursuant to this Title, IGRA, and the Compact, including the conduct of background investigations for License applicants, continuous review of licensees, and ensuring that all suitability standards required of licensees are met and maintained.
- (2) Compliance Division. The Compliance Division shall have authority to monitor and investigate compliance with this Act, including:
  - (A) Monitoring, inspecting, and investigating known or suspected violations of this Act and regulations promulgated pursuant thereto or other applicable laws as well as the Compact(s);
  - (B) Conducting or causing to be conducted inspections and investigations related to the health, safety, and environmental protection of patrons, staff, facilities, and the external environment;

- (C) Monitoring the installation, use, and operation of games, gaming systems and gaming equipment; and
- (D) Carrying out other functions and responsibilities as directed or assigned by the Chief Gaming Regulator or the SNGA Gaming Commissioners.

(3) Audit Division. The Audit Division shall have responsibility for:

- (A) Conducting financial and other audits to ensure compliance with all financial and operational requirements for Gaming activities of the Seminole Nation such as those included in this Title, IGRA, Title 31 of the United States Code, SNGA regulations, and the Compact;
- (B) Assuring that all necessary external audits are performed annually or at such other periods as may be required;
- (C) Reviewing all audit reports and the financial controls in place in such gaming operations;
- (D) Reporting all violations and material weaknesses to the Chief Gaming Regulator and SNGA Gaming Commissioners for appropriate action; and
- (E) Carrying out other functions and responsibilities as directed or assigned by the Chief Gaming Regulator or the SNGA Gaming Commissioners.

(4) Surveillance Division. The Surveillance Division shall have the responsibility for conducting a continuous surveillance program at all gaming operations licensed under this Title including the designation of locations and operation of continuous camera coverage of gaming operations, the recording of such camera coverage, the operation of any rooms designated for surveillance over gaming activities, the conduct of surveillance investigations, and the conduct of such other surveillance as may be appropriate. Such surveillance program shall comply with all terms and reporting requirements related to surveillance provisions of this Title, IGRA, and the Compact.

(d) Employment Limitations. Persons employed by the Seminole Nation Gaming Agency shall:

- (1) Undergo a background investigation and meet the same suitability criteria as that applicable to key employees;

- (2) Be independent of SNGE. Officials and employees of the SNGA may not be employed by SNGE nor shall they participate in any gaming activities, including promotional activities;
- (3) Have no financial interest in the operation of a licensee under this Act or in any contract entered into between the Gaming Operation and another party; and
- (4) Shall not be considered “employees” of the Nation as defined by Title 11 of the Seminole Nation Code of Laws; and shall only be subject to the hiring, firing, benefits and terms of the SNGA’s Employment Policies and Procedures. Any extension of benefits under the Nation’s policies of laws shall not be construed as waiver and it shall not constitute or give rise to the expectation of continued employment or additional employment rights outside of the SNGA policies. Nothing in the SNGA policies shall be construed as an employment contract or a waiver of the Sovereign immunity of the SNGA or the Seminole Nation or consent to lawsuit.

(e) Gaming Commissioners may Issue Subpoenas and Compel Testimony. Issue subpoenas to compel testimony and to obtain records and things as needed for investigations or civil violation hearings.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012; amended by TO 2013-03, June 1, 2013.]

**Section 102. Establishment, Appointment, Term, and Qualifications of the Seminole Nation Gaming Agency Commissioners and Chief Gaming Regulator; Provision for Acting Chief Gaming Regulator**

(a) The Seminole Nation Gaming Agency shall consist of three SNGA Gaming Commissioners nominated by the Principal Chief for appointment and confirmed by the General Council.

(b) To be eligible for appointment as an SNGA Gaming Commissioner, a nominee shall:

- (1) Based on a combination of experience and education, be considered to be capable of performing the duties of the position with preference given to those who have obtained an associate degree, or bachelor’s degree, and have significant gaming experience and certifications;
- (2) Be at least twenty-five years of age at the time of appointment;
- (3) Never have been convicted on any crime of moral turpitude, including, but not limited to, fraud, theft, bribery, or embezzlement, regardless of the degree of the offense, by any court of law;

- (4) Never have been convicted of any felony offense by any court of law;
- (5) Never have been found culpable for any gaming offense by any regulatory jurisdiction;
- (6) Never have had a gaming license suspended or revoked;
- (7) Never have been removed from the office of Gaming Commissioner or gaming employee of misconduct or cause;
- (8) Have no pecuniary interest in any gaming management contract between the Nation and a third party, or in any entity that provides gaming equipment or supplies to a Facility licensee; and
- (9) Preference shall be given to members of the Seminole Nation and then to non-member, Native Americans and then to non-Native Americans.

(c) Within six (6) months of the enactment of this provision, the Principal Chief shall nominate three individuals to serve as SNGA Gaming Commissioners, such nominations to be affirmed or denied by the General Council. The term of office for Gaming Commissioners shall be five years; the initial appointments under this provision shall serve staggered terms of one (1), two (2) and three (3) years, respectively. Individuals serving as SNGA Gaming Commissioners may be reappointed for subsequent terms.

(d) Each SNGA Gaming Commissioner shall be entitled to receive a stipend of \$6,000.00 per year as approved by the General Council in the annual SNGA budget. Gaming Commissioners shall not be considered employees of the Nation for purposes of Title 11.

(e) The SNGA Gaming Commissioners shall meet not less than monthly with additional meetings to be called as needed subject to prior posting of notice with the Office of the Principal Chief and the Office of the Council Secretary. The SNGA Gaming Commissioners shall have the authority to call special, emergency meetings as necessary; however, in all meetings, special or regular, attempted, reasonable notice must be made as soon as possible to all Commissioners and the Chief Gaming Regulator.

(f) Actions taken by the SNGA Gaming Commissioners shall be upon majority vote.

(g) Within three months of their appointment, the SNGA Gaming Commissioners shall hire a Chief Gaming Regulator who shall be hired as the equivalent of a Grade 15 position pursuant to Title 11, Section 202 of the Seminole Nation Code of Laws or as modified in an annual budget approved by the General Council.

(h) The Chief Gaming Regulator shall be the equivalent of an Executive Director as used in Title 11. The Chief Gaming Regulator shall remain exempt from Title 11. All employment-related disputes shall be handled by the SNGA Gaming Commission.

(i) Chief Gaming Regulator. The Chief Gaming Regulator shall be responsible for the day-to-day direction and management the SNGA at the direction of the SNGA Gaming Commissioners.

(j) Acting Chief Gaming Regulator. If the position of the Chief Gaming Regulator position becomes vacant for any reason, including, but not limited to retirement, termination, resignation, disability, or death, any SNGA Gaming Commissioner, who is willing and able may assume the responsibilities as Acting Chief Gaming Regulator, as an interim appointment of the Principal Chief not requiring additional confirmation by the General Council shall be appointed with notice to the General Council for a term not to exceed three (3) months until a replacement is appointed or hired.

(k) These provisions shall take full force and effect upon the appointment of at least two of the three SNGA Gaming Commissioners by the General Council. After three SNGA Gaming Commissioners are initially appointed, a subsequent, simultaneous vacancy of two SNGA Gaming Commissioners shall not prevent the action of a single SNGA Gaming Commissioner from having authority act until such time as replacements are appointed.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-12, December 1, 2001; amended by TO 2003-32, December 6, 2003; amended by TO 2003-24, December 16, 2003; amended by TO 2004-31, December 4, 2004; amended by TO 2007-02, March 3, 2007; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012; amended by TO 2013-03, June 1, 2013.]

### **Section 103. Outside Employment and Activities of the Chief Gaming Regulator**

The Chief Gaming Regulator may not hold any other tribal position except temporary duties assigned by Executive Order to be performed without increase in compensation. Subject to approval of the SNGA Gaming Commissioners, the Chief Gaming Regulator may not be engaged in a business or employment outside the Nation, provided that the Chief Gaming Regulator shall not engage in any business which is subject to provisions of this Title or which has commerce with any licensee under this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 104. Removal or Suspension of Gaming Commissioners**

(a) Cause Required. A SNGA Gaming Commissioner may be removed for cause, which shall include, but is not limited to: failure to carry out SNGA duties, excessive use of intoxicants or controlled substances, use of office for personal gain, violation of this Title or other law or regulation of the Nation or of IGRA, or any misconduct or gross neglect of duty reflecting adversely on the dignity and integrity of the Seminole Nation or its government. Only the General Council shall have the authority to remove a Gaming Commissioner upon majority vote, provided that the removal process may be commenced upon recommendation of the Chief.



(b) Removal Authority. A SNGA Gaming Commissioner may be removed from office prior to the end of any term when the General Council by majority vote removes said Commissioner for any of the following reasons, including but not limited to:

- (1) Failure to carry out his or her SNGA responsibilities,
- (2) Excessive use of intoxicants or controlled substances,
- (3) Use of office for personal gain,
- (4) Violation of this Title or other law or regulation of the Nation or of IGRA, or
- (5) Any misconduct or gross neglect of duty reflecting adversely on the dignity and integrity of the Seminole Nation or its government.

(c) Mandatory Removal. A Gaming Commissioner shall be removed by the General Council upon majority vote and the position deemed immediately vacant if the Commissioner is, but not limited to:

- (1) Convicted by a court of law of any felony,
- (2) Convicted for any misdemeanor offense involving a crime of moral turpitude,
- (3) Found by any gaming jurisdiction to be culpable for any gaming offense, or
- (4) Found to be ineligible for a gaming License under this Title.

(d) Suspension. A SNGA Gaming Commissioner may be suspended by the Principal Chief for the following circumstances, including but not limited to: misconduct, pending removal process, or any criminal charge, arrest, or conviction. Suspension may be without pay. Should any charge or arrest not result in a conviction, back-pay may be retroactive upon financial availability.

(e) Due Process for Removal. In any removal process, a Notice of Proposed Removal shall be provided to the SNGA Gaming Commissioner at least fourteen days in advance of the date set for the General Council's meeting to take action on such removal, and shall set forth, in particular, the basis for such proposed action with sufficient specificity as to permit the preparation of an answer to such allegation(s). The respondent shall have the right to be represented by legal counsel at respondent's own expense and shall be permitted to speak and offer relevant evidence in his or her own defense. The General Council's decision shall be final and unappealable.

(f) Continuing Duty to Report. A SNGA Gaming Commissioner shall serve under a continuing duty to apprise the Principal Chief and the General Council of any charge, arrest, or conviction that occurs during his or her term of office.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2004-04, January 17, 2004; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

**Section 105. Duties and Authorities of the Chief Gaming Regulator**

- (a) Responsibilities. The Chief Gaming Regulator shall:
- (1) Administer and Enforce This Title. Be charged with the responsibility of administering and enforcing the provisions of this Title at the direction of the SNGA Gaming Commissioners.
  - (2) Direct and Manage SNGA. Direct and manage the SNGA and its staff and administer the resources of the SNGA as directed by the SNGA Gaming Commissioners.
  - (3) Monitor and Enforce Compliance. Monitor and enforce compliance with all laws and regulations applicable to the Nation's gaming activities.
  - (4) Issue Regulations. Subject to approval of the SNGA Gaming Commission, have the authority and responsibility for issuing regulations to implement all provisions of this Title for the purposes and in the manners provided in Section 107 of this Title, which authority and responsibility may not be further delegated.
  - (5) Resolve Patron Disputes. Investigate, determine the validity of, and order action on the part of the Enterprise or deny action to a patron in a patron dispute, other than one involving a prize claim or machine malfunction, which order or denial shall be final action on behalf of the Seminole Nation and may not be appealed to the Gaming Commission.
  - (6) Resolve Patron Disputes Over Prizes. Investigate, determine the validity of, and order action granting to a patron claimant the just and reasonable compensation for the amount of a prize not previously paid to a patron by the Enterprise in the case of a prize claim not resolved by the Enterprise within seventy-two hours of the filing of the prize claim where the prize earned was not awarded, the amount earned was not awarded, or the right to receive a refund or other compensation was infringed upon by the Gaming Operation, or order the denial of such a claim on behalf of the Enterprise. Provided further that:
    - (A) Such actions by the Chief Gaming Regulator shall be in accord with the Compact(s) for any games covered by the Compact(s);
    - (B) The Chief Gaming Regulator shall, subject to the approval of the SNGA Gaming Commission, promulgate regulations for this

purpose, which regulations shall be consistent with the Compact for all games covered under the Compact;

- (C) Failure on the part of a claimant to file a timely claim or follow the procedures provided in the Compact or the regulations promulgated under this subsection shall constitute mandatory grounds for denying a prize claim; and
  - (D) A decision of the Chief Gaming Regulator denying a prize claim by a patron shall be deemed a denial of the prize claim by the Enterprise and may be appealed by the denied patron to the SNGA Gaming Commission.
- (7) Designate a Deputy Chief Gaming Regulator. Subject to the approval of the SNGA Gaming Commission, designate an employee of the SNGA, as a collateral duty, to serve as Deputy Chief Gaming Regulator, who shall assume the duties of the Chief Gaming Regulator when the Chief Gaming Regulator is: 1) on leave or travel; 2) recused from dealing with a particular matter; or 3) otherwise unavailable. The Deputy Chief Gaming Regulator, for such time and with such authority and responsibilities as may permissibly be delegated by the Chief Gaming Regulator, shall assume the functions and responsibilities of the Chief Gaming Regulator.
  - (8) Make Employment Decisions. Employ such persons, in conformity with job descriptions approved by the SNGA Gaming Commissioners, as may be necessary and are within the approved budget of the SNGA, assign them responsibilities, and delegate them authority to act. The authority to employ persons shall include the authority to hire, terminate, suspend, discipline and take other personnel actions commensurate with managing a staff of employees consistent with the SNGA Employment Policies. The Seminole Nation Gaming Regulatory Agency shall be exempted from the requirements of Title 11 of the Seminole Nation Labor Laws, the Seminole Nation Employment Systems Act; however, if SNGA fails to adopt employment, personnel or labor guidelines, regulations or policies, Title 11 requirements shall apply until such time as the SNGA Employment Policies are adopted. Nothing in this section prevents the SNGA from adopting or opting into the requirements of Title 11.
  - (9) Classify and License Games. Classify and license Class I, II, or III games subject to the approval of the SNGA Gaming Commission.
  - (10) Develop and Administer the SNGA Budget. Subject to the approval of the SNGA Gaming Commission and the budget provisions of Title 14, develop and recommend the budget for operations of the SNGA to the Principal Chief, the Finance Committee, and the General Council, and administer the financial affairs of the agency in accordance with appropriate governmental accounting standards.

- (11) **Write Checks.** Have check writing authority, provided that any checks written for \$1000.00 or more shall require the signature of either the Chief Gaming Regulator or the Deputy Chief Gaming Regulator and the signature of a SNGA Gaming Commissioner, further provided that no signatory on any check shall also prepare such check. The Chief Gaming Regulator subject to the approval of the SNGA Gaming Commissioners shall institute a system of accounting consistent with generally accepted government accounting principles and sufficient financial controls to ensure that the total amount of expenditures by the SNGA shall not exceed the annual budget level approved by the General Council. The Seminole Nation Treasurer shall maintain SNGA bank accounts on behalf of the SNGA. Should there be a vacancy in either the Chief Gaming Regulator and/or the Deputy Chief Gaming Regulator, SNGA Gaming Commissioners shall have check signing authority.
- (12) **Secure Legal and Other Services.** Employ or contract for legal and other services by providers subject to the approval of the SNGA Gaming Commission. The SNGA Gaming Commission may utilize the services of the Office of Attorney General.
- (13) **Assess and Collect Licensing Fees.** Assess and collect licensing fees, which shall be retained and used by the SNGA to offset its expenses.
- (14) **Assess and Impose Fines.** Subject to the approval of the SNGA Gaming Commission, assess and impose fines for violations of this Act or non-compliance with regulations issued pursuant hereto, provided that the proceeds from an imposed fine shall be deposited into the general fund of the Seminole Nation.
- (15) **Observe Gaming Activities.** The Chief Gaming Regulator and such staff and attorneys of the SNGA, as he or she may designate or direct, shall have the authority to observe all Gaming-related activities at Licensed facilities under this Title in order to provide oversight of all gaming activities under this Title, to assure financial accountability, and to assure compliance with IGRA, this Title, and SNGA regulations. Interference with the monitoring functions of the SNGA shall be deemed a substantial violation of this Act.
- (16) **Hold Public Hearings, Take Sworn Testimony, and Take Other Legal Acts.** The Chief Gaming Regulator and such staff and attorneys of the SNGA, as may be designated by the Chief Gaming Regulator, shall have the authority to hold public hearings, take sworn testimony and do any other legal act in furtherance of the SNGA's duties.
- (17) **Seek Comity With Other Court Jurisdictions.** The Chief Gaming Regulator is empowered to seek comity and enforcement of the orders of the SNGA by the courts of any jurisdiction whose assistance may be required to give

effect to such orders. The Chief Gaming Regulator is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts.

- (18) Perform Other Duties. Perform all duties and responsibilities that are deemed by the Chief Gaming Regulator or SNGA Gaming Commissioners as necessary to carry out the provisions of this Title, the SNGA's regulations, IGRA, the terms of the Compact, and all other activities as are consistent with the power and authority delegated to the Chief Gaming Regulator and the SNGA under this Title
- (19) Exercise Authorities of the SNGA. The Chief Gaming Regulator is empowered to exercise the authorities granted to the SNGA.
- (20) Procurement. The SNGA shall be exempted for Title 11 and 14 for the purposes of TERO and Procurement. The SNGA shall adopt procurement policies and contracting policies subject to the approval of the SNGA Gaming Commissioners.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-12, December 1, 2001; amended by TO 2004-05, March 6, 2004; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012; amended by TO 2013-03, June 1, 2013.]

#### **Section 106. Duties and Authorities of the Seminole Nation Gaming Agency**

In addition to the duties and authorities of the Chief Gaming Regulator and the SNGA Gaming Commission described in Section 105 of this Title, the SNGA shall regulate all gaming activities on the Indian Lands of the Seminole Nation and enforce the provisions of this Title. Commensurate with these responsibilities, the SNGA shall have the following powers, duties, and responsibilities:

- (a) License. To -
  - (1) Prepare, print, distribute, and process applications for and issue Licenses to gaming facilities, employees, and vendors;
  - (2) Establish a schedule of fees for gaming Licenses, and collect such fees;
  - (3) Approve or deny any License application;
  - (4) Revoke, limit, condition, suspend, or restrict any License; and
  - (5) Make a finding of suitability or approval of a License, provided that the SNGA shall afford all licensees due process of law prior to the issuance of a final order of denial, revocation, or suspension;

- (b) Review. To -
  - (1) Obtain and review any and all gaming contracts, records, and documents and anything else necessary and pertinent to the financial accountability of licensees or enforcement of any provision of gaming contracts, agreements, IGRA, this Title, and other applicable laws of the Seminole Nation.
  - (2) Obtain and review any reports prepared or caused to be prepared by SNGE and/or the Gaming Enterprise related to the Gaming Operation, including all financial statements, performance reports, income and expense statements, reports, and documentation, and any other record, document, or file related to the Gaming Operation.
  - (3) Review, and as necessary, approve operational plans, policies, and procedures of the Gaming Operation including plans for promotions, marketing, player tracking, advertising and any other programs of the Gaming Operation.
- (c) Monitor, Inspect, and Regulate. To -
  - (1) Monitor and regulate the conduct of all licensees, and
  - (2) Inspect and examine all premises where gaming is conducted or gaming devices or equipment is stored and/or serviced.
- (d) Surveillance. To -
  - (1) Operate a program of continuous surveillance at all gaming operations licensed under this Title including designation the locations and operation of continuous camera coverage of gaming operations, the recording of such camera coverage, the operation of any rooms designated for surveillance over gaming activities, the conduct of surveillance investigations, and the conduct of such other surveillance as may be necessary and appropriate.
  - (2) Charge the entire cost of the surveillance program, including personnel and equipment costs, in the form of a fee assessment against the Gaming Operation.
- (e) Investigate. To conduct such investigations as may be needed to carry out the purposes of this Title including the conduct of background investigations to determine the suitability of gaming License applicants and the investigation of any suspected violations of this Title, IGRA, the Compact, and all applicable laws, rules and regulations. In carrying out its investigative function the SNGA -
  - (1) May audit, inspect, examine, and photocopy an applicant's or licensee's papers, books, and records, including financial records, employment

history, and any and all other information the Agency deems necessary to determining the suitability of applicants and the continuing suitability of licensees; and

- (2) Shall refer any criminal activity it uncovers to the appropriate law enforcement agency for prosecution;

(f) Sanction and Enforce. To impose fines or otherwise sanction violations of this Title and enforce its terms by means of appropriate orders and/or directives, provided that the Agency shall accord all licensees due process of law prior to the issuance of a final order of denial, revocation, or suspension;

(g) Audit. To conduct such audits as may be needed for the proper control and financial oversight of gaming activities, including financial and operational audits; and

- (1) Ensure that an annual independent financial audit is performed and timely submitted to the NIGC, SCA, and the Seminole Nation; and
- (2) Ensure that an annual independent operational audit conducted pursuant to agreed upon procedures in relation to the Gaming Operation's compliance with the internal control standards established by SNGA, applicable NIGC regulations, and the Compact;

(h) Conduct Hearings. To conduct hearings, issue subpoenas, take testimony, and render decisions concerning -

- (1) Licensing matters;
- (2) Patron disputes;
- (3) Exclusion matters;
- (4) Enforcement matters;
- (5) Evidentiary matters; and
- (6) Such other matters as necessary and appropriate to the discharge of its duties;

(i) Issue Orders and Citations. To issue orders and citations compelling action; Assess Civil Penalties; and To assess civil Penalties.

(j) Monitor and Regulate Games. To monitor, regulate, classify, and establish technical standards for games, gaming activities, and gaming equipment;

(k) Appear in Legal Proceedings. To appear before the SNGA Gaming Commission and the Seminole Nation Court in any proceeding to which the Agency has voluntarily consented a party or witness;

(l) Grant Approvals for Operating Policies and Procedures of Gaming Activities. To approve or disapprove all operating policies and procedures of the Seminole Nation's gaming activities;

(m) Resolve Patron Disputes. To resolve patron disputes such as those over casino access and prize claims, but not tort claims.

(n) Address Patron Gaming Problems. to make determinations regarding the exclusion of, or other actions related to, persons determined by the Gaming Operations to have a compulsive gaming problem.

(o) Provide for Intergovernmental Cooperation. To enter into cooperative agreements or other arrangements with other governmental entities, including but not limited to tribal, state, and federal agencies, or to contract with private entities or institutions for the performance of functions or activities related to the regulation of gaming such as health and safety inspections, environmental review, and other technical services, provided that the Agency shall not waive or purport to waive any jurisdiction of the nation or the Nation's sovereign immunity from unconsented suit.

(p) Reporting. That SNGA shall provide written reports to the General Council no less than quarterly and shall provide additional reports, written or verbal, upon request by either the Principal Chief or the General Council

(q) Perform Other Responsibilities. Perform any and all duties and responsibilities that are deemed by the Chief Gaming Regulator as necessary to carry out the provisions of this Title and the Seminole Nation of Oklahoma Code, the SNGA's regulations, IGRA, the terms of the Compact, and all other applicable laws and regulations; and handle such other matters and conduct such other activities as are consistent with the power and authority delegated to the SNGA Gaming Commission, Chief Gaming Regulator, and the SNGA under this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-12, December 1, 2001; amended by TO 2004-05, March 6, 2004; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

#### **Section 107. Issuing, Revising, and Withdrawing Regulations**

(a) Promulgate Regulations. The SNGA shall promulgate regulations as necessary to administer the provisions of this Title.

(b) Regulatory Scope. The scope of the rulemaking authority of the SNGA shall include the authority to promulgate rules and regulations -

(1) Necessary for the orderly transaction and conduct of SNGA operations;



- (2) Establishing standards and procedures for the licensing and/or registration of persons and entities including, but not limited to, the issuance, suspension and revocation of Licenses under this Title;
- (3) Establishing standards and procedures for the licensing and regulation of games to be used at a licensed Facility;
- (4) Adding categories of employees, other persons, or entities to the list of positions classified as Key Employees or entities classified as Gaming Vendors;
- (5) Governing the conduct and operation of gaming and gaming-related activities such as, but not limited to, the award of prizes, internal control standards, technical standards, installation of equipment, and classification of games;
- (6) Governing inspections, investigations, and enforcement actions;
- (7) Establishing fees for licensing;
- (8) Establishing fines and other sanctions, and taking such other actions as may be necessary to enforce SNGA regulations, this Title, IGRA, regulations of the NIGC, and the Compact;
- (9) Establishing procedures for hearings conducted by the SNGA;
- (10) Establishing procedures for service of process;
- (11) Establishing procedures for appeals of regulations promulgated by SNGA pursuant to this Section;
- (12) Governing the handling and disposition of Patron Disputes;
- (13) Governing the exclusion of Patrons to Gaming Operations or portions thereof;
- (14) Governing programs for addressing compulsive gaming;
- (15) Governing the protection and relationship of Gaming Operations and their employees with vendors and contractors;
- (16) Governing promotional activities, advertising, player tracking, and other marketing activities;
- (17) Necessary to protect the security, public health, and safety of gaming patrons, employees, and other persons while on the premises of gaming operations on Indian Lands of the Seminole Nation; and

- (18) Addressing such other issues and matters as are necessary to fulfill the purposes of this Title and the duties and functions of the SNGA as provided for herein.

(c) Rulemaking Procedure. The SNGA shall adhere to the following procedures when promulgating regulations under this Title.

(1) Standard Rulemaking Procedure.

- (A) Prior Notice. In adopting, amending, or repealing any regulations under this Title other than emergency, mandatory, minor or interpretive regulations, the SNGA Gaming Commission shall give prior notice of the proposed action by posting such notice on its website along with a copy of the text of the proposed regulations.
- (B) Comment. There shall be a thirty (30) day period during which any Nation member or an affected person or entity may submit written comments to the SNGA on the proposed rule.
- (C) Promulgation. Upon receipt and review of comments, if any, the Commission may promulgate the regulation as a final regulation in its original or amended form, or may withdraw the proposed regulation.
  - (i) Such final regulation shall be made available to the public on the website of the SNGA and/or the Nation.
  - (ii) The SNGA Gaming Commission may stay the implementation of a final regulation for good cause shown.
  - (iii) If the proposed regulation is withdrawn, it shall be removed from the website.

(2) Emergency Rulemaking Procedure. In the event the SNGA Gaming Commission concludes that promulgating a regulation is sufficiently urgent that the requirements of the Standard Rulemaking Procedure would result in damage to the interests to the Seminole Nation or violation of this Title, IGRA, or the Compact, the SNGA Gaming Commission may promulgate a regulation as an interim final regulation without prior notice or may shorten the period for comment as he or she deems necessary.

(3) Mandatory Compliance Rulemaking Procedure. In the event of a change in applicable Seminole Nation law; applicable federal statutes or regulations; or the execution of a new; modified or revised Compact requires an urgent change in Seminole Nation gaming regulations for the Seminole Nation gaming activities to be in compliance, the SNGA Gaming Commission may promulgate a compliant regulation as an interim final regulation without prior notice, or may shorten the period for prior

notice as he or she deems necessary to comply with the change. Such interim final regulation shall be made available for written comment by licensees for a period of not less than thirty (30) days.

- (4) Minor Rulemaking Procedure. The Chief Gaming Regulator may make technical corrections or minor amendments to the SNGA regulations without prior notice, but such minor amendments under this procedure must have de minimus effect. Such final technical corrections or minor amendments shall be made public in the same manner as under the Standard rulemaking Procedure before the rule shall be deemed final.
- (5) Interpretive Rulemaking Procedure. The SNGA Gaming Commission may issue regulations without prior notice giving its interpretation of regulations issued under this Section, IGRA, or the Compact. Such interpretive regulations shall be made public in the same manner as under the Standard Rulemaking Procedure.
- (6) Interim Final Regulations. When exercising the rulemaking authority pursuant to paragraphs (2)-(4) of this subsection, the SNGA Gaming Commission shall issue such regulation in the form of an interim final regulation. An interim final regulation shall be enforceable immediately upon its publication on the website, however, that the SNGA shall accept written comments for a period of not less than thirty (30) days from the date of publication before the rule may be deemed final.

(d) Regulatory Effect. Regulations promulgated under this Title shall bind all persons, organizations, or vendors licensed under this Title within the scope of their License; gaming activities operated by SNGE and/or the Gaming Enterprise; all visitors, guests and patrons of a gaming facility; and all persons employed by the Gaming Operation. Failure to comply with any regulation of the SNGA shall constitute a violation of Seminole Nation law and subject the violator to fines, penalties, or other sanctions.

(e) Standard of Review. The SNGA Gaming Commission and shall give deference to the regulations and/or challenged actions or decisions made pursuant thereto, unless the regulation and/or challenged action or decision is:

- (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) Contrary to the Constitution of the Seminole Nation or any right, power; privilege, or immunity under Seminole Nation law; or
- (3) In excess of the authority delegated by this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-12, December 1, 2001; amended by TO 2004-05, March 6, 2004; amended by TO 09-08, June 6,

2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

**Section 108. Confidentiality of SNGA Records**

(a) Use of Confidential and Proprietary Information. Confidential and proprietary information collected by the SNGA in the performance of its investigative or regulatory functions, as specified in this Section, may be used only for official purposes by the SNGA.

(b) Disclosure of Confidential Information. Confidential information may not be disclosed to any entity other than a law enforcement agency, the NIGC, the State of Oklahoma, or another gaming regulatory agency except pursuant to a lawful court order unless the applicant or licensee files a written waiver of confidentiality with SNGA.

(c) Confidential Records. The following types of records shall be deemed confidential:

- (1) Tax returns of individual applicants or licensees;
- (2) Gaming License application forms;
- (3) Credit reports and financial history records of individual applicants or licensees;
- (4) Health and medical records of individual applicants or licensees;
- (5) Social security and driver's license numbers of individual applicants or licensees;
- (6) Marketing, financial, or sales data, the disclosure of which may be harmful to the competitive position of SNGE or the Gaming Enterprise, SNGA licensees or persons seeking or doing business with SNGE or the Gaming Enterprise, provided that no financial information shall be withheld from the General Council;
- (7) Audit work papers, worksheets and auditing procedures used by the SNGA, its agents or employees; and
- (8) Such other documents, information, or records as the SNGA may specify by regulation.

(d) Privileged Communications. Communications between the Chief Gaming Regulator and the staff of the SNGA relating to licensing, disciplining of licensees, or violations by licensees are privileged and confidential if made lawfully and in the course of and in furtherance of the business of the SNGA on gaming, except pursuant to court order after an in-camera review. The Chief Gaming Regulator or any member of the staff of the SNGA may claim this privilege.

(e) Limitations. No SNGA Gaming Commissioner, Chief Gaming Regulator, or member of the staff of the SNGA shall:

- (1) Disclose confidential information except to other gaming regulatory agencies or law enforcement agencies;
- (2) Hold financial interests in or transact business with the gaming enterprise in conflict with the conscientious performance of their duties as regulators;
- (3) Use their office or position for private gain; or
- (4) Fail to disclose any conflict of interest to the SNGA or fail to recuse oneself from any participation in such matter.

(f) Breach. Any SNGA Gaming Commissioner, Chief Gaming Regulator or SNGA staff member who intentionally breaches the SNGA's duty of confidentiality; uses confidential information for any improper purpose; or otherwise breaches the official's ethical duties may be subject to removal from office or termination from employment with the SNGA.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-12, December 1, 2001; amended by TO 2004-05, March 6, 2004; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

#### **Section 109. Right to Appeal SNGA Actions**

(a) Unless otherwise specified in this Title, any action or decision of the Chief Gaming Regulator or the SNGA, other than:

- (1) Issuing, revising, or withdrawing a regulation, or
- (2) A personnel action of the Chief Gaming Regulator with regard to an employee of Seminole Nation Gaming Agency is subject to appeal to the SNGA Gaming Commission as provided in Section 111 of this Title and subsequently, subject to the limits in Section 111, the Seminole Nation Court.

(b) Failure to timely file an appeal as specified in this Title shall render final and unappealable a decision by the Chief Gaming Regulator or SNGA Gaming Commission. Unless otherwise specified by Compact or this Code, appeals shall be filed no less than (30) calendar days from SNGA action.

(c) Employees of the Seminole Nation Gaming Agency shall be exempt from the appeal and grievance provisions of Title 11 of the Seminole Nation Code of Laws. The SNGA Gaming Commission shall have final authority to hear employee grievances and render determinations thereon.

(d) The SNGA Gaming Commission shall have appellate jurisdiction over actions and decisions of the Chief Gaming Regulator or actions or decisions unlawfully withheld under this Title including, but not limited to, licensing decisions, enforcement actions taken, directives issued to licensees, approvals of licensee actions, and licensee requests denied.

(e) In furtherance of its jurisdictional responsibilities, the SNGA Gaming Commission shall:

- (1) Develop rules and procedures consistent with this Title, including but not limited to Section 110, for processing, hearing, and rendering decisions on appeals subject to its jurisdiction. Such rules and procedures shall be adopted and published by the SNGA Gaming Commission on the website of the Nation;
- (2) Receive, process, hear, remand, decide, dismiss, and/or otherwise dispose of appeals made by the Gaming Operation, individual licensees, vendor licensees, registrants, or permittees; and patrons and other persons or entities;
- (3) Render written decisions on matters coming before it for disposition within (30) business days from the later of the date of hearing or waiver of hearing; and
- (4) Maintain, or cause to be maintained, a permanent system of records of cases and matters.
- (5) All personnel, procurement and other administrative actions of the SNGA Gaming Commission shall be in accordance with the administrative requirements of the Seminole Nation Code; however, exempted from Title 11.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-12, December 1, 2001; amended by TO 2004-05, March 6, 2004; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

**Section 110. Appellate Procedure of the Seminole Nation Gaming Commission, Judicial Review: Due Process**

(a) Jurisdiction.

- (1) The SNGA Gaming Commission shall have appellate jurisdiction over all decisions of the Chief Gaming Regulator and the SNGA.
- (2) The SNGA Gaming Commission shall have primary appellate authority over all patron prize, machine malfunctions, and tort claim disputes. By this provision, and consistent with both the language and intent of the

Compact, the Nation affirms and clarifies that no state or federal court shall have jurisdiction over any tort or prize claim arising within the Nation's Jurisdiction or relating in any way to the Gaming Operation.

- (3) The SNGA Commission shall have jurisdiction to compel the Chief Gaming Regulator to act timely in accordance with the requirements in this Title or the Compact on a matter within SNGA Gaming Commission's jurisdiction, provided that the SNGA Gaming Commission may not compel a specific outcome in a particular matter when exercising its compulsory authority.

(b) Process. The matters subject to appeal under this Section may be appealed in accordance with the following:

- (1) The appellant must have exhausted all available administrative remedies;
- (2) The appeal shall be in writing and shall state the name of the licensee, the issue(s) contested and the change(s) sought, the basis of such change(s), and such evidence as the appellant may wish to submit.
- (3) In addition to the written appeal, the appellant may request an oral hearing before the SNGA Gaming Commission.
- (4) If a hearing is granted and takes place, it shall be at a date, time and place as set by the SNGA Gaming Commission and shall be recorded, at the Appellant's expense, by a certified shorthand reporter.
- (5) The SNGA Gaming Commission shall issue a written determination supporting or denying (in whole or in part) the appeal and setting out its basis for the decision within (30) business day after hearing or if hearing waived, upon receipt of appeal.
- (6) Such written determination shall be deemed a final action of SNGA Gaming Commission.

(c) Seminole Nation Court.

- (1) Appellate Jurisdiction - Tort Claims

- (A) The Seminole Nation Court shall have the authority to review decisions by the SNGA Gaming Commission related to claims for personal injury or property damage filed by a patron against the Gaming Operation. All Patrons shall be deemed to have consented to the civil jurisdiction of the Seminole Nation Court. The Gaming Operation does not consent, and shall not be permitted to consent, to jurisdiction in any other court.

- (B) A patron may assert a claim against the Gaming Operation in the Seminole Nation Court only if:
- (i) The purported personal injury occurred on the premises of a Gaming Facility licensed under this Title;
  - (ii) The claimant followed all necessary procedures pursuant to the pertinent terms of the Compact; exhausted all administrative remedies; and provided all of the information required by the Compact for filing such a claim including, without limitation, the delivery of a valid and timely written tort claim notice, signed by the claimant under an oath affirming the validity of all information provided in the notice, to the Gaming Operation;
  - (iii) The Gaming Operation denied the tort claim; and
  - (iv) The claimant filed the appeal in the Seminole Nation Court no later than the one-hundred-eightieth day after denial of the claim by the Enterprise.
- (C) Limitation on Jurisdiction.
- (i) The Seminole Nation Court shall have no jurisdiction to award damages to any claimant in excess of the limits of the Gaming Operation's liability insurance and no judgment may entered or recovered except against the Gaming Operation's liability insurance policy.
  - (ii) A claimant's failure to file a tort claim or prize claim in accordance with the requirements of this subsection and in accordance with all applicable requirements of the Compact shall constitute a waiver of all rights of appeal and further shall deprive the Seminole Nation Court of jurisdiction over the claim.
  - (iii) A claimant's failure to file a tort claim within one year of the date of the purported personal injury shall deprive the Seminole Nation Court of jurisdiction over the matter and forever bar such tort claim against the Gaming Operation.
  - (iv) The Seminole Nation Court shall have no authority to award damages from the assets of the Seminole Nation.
  - (v) Except as specifically provided in the Nation's Compact, nothing herein shall be construed as a waiver of the Nation's sovereign immunity from suit.



(2) Appellate Jurisdiction.

- (A) The Seminole Nation Court shall have appellate jurisdiction over final decisions of the SNGA Gaming Commission, provided that the appeal is filed no later than the thirtieth (30th) day following the date of a final decision by the SNGA Gaming Commission.
  - (i) Failure to seek review of the final action of the SNGA Gaming Commission by the thirtieth (30th) day following the date of such final action or decision shall constitute a waiver of all rights of appeal and further shall deprive the Seminole Nation Court of jurisdiction over the matter.
- (B) The Seminole Nation Court(s) shall have appellate jurisdiction over the SNGA Gaming Commission's actions and decisions in relation to prize claims and patron disputes, provided that a claimant's failure to file a prize claim notice within ten days of the event which forms the basis of a prize claim shall forever bar such prize claim and shall operate to deprive the Court of jurisdiction in the matter.

(3) Judicial Process.

- (A) Except as otherwise provided in this Title, the manner and further requirements for filing appeals and/or claims for adjudication in the Seminole Nation Court shall be in accordance with the Court's rules and procedures.
- (B) Appeals to the Seminole Nation Court of SNGA Gaming Commission decisions concerning actions and/or decisions of SNGA or the Chief Gaming Regulator shall be limited to the administrative record that was before the Chief Gaming Regulator or SNGA at the time of the final action, including any recording or hearing transcript(s) resulting from any hearings conducted by the Commission and its written records of decision. The standard of review shall not be de novo, but shall be abusive or discretion, arbitrary or capricious, or clear error.
- (C) The Seminole Nation Court may remand any matter to the Commission for further proceedings as warranted by the circumstances.

(4) Standard of Review.

- (A) The Commission and the Seminole Nation Court shall give deference to the administrative expertise of the Chief Gaming Regulator and shall not set aside, modify, or remand any

determination by the Chief Gaming Regulator except upon a finding that the decision, action, or lack of action was:

- (i) Arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;
    - (ii) Contrary to right under the Constitution of the Seminole Nation, this Title, the Compact or other applicable law;
    - (iii) In excess of statutory jurisdiction, authority, or limitation or short of statutory right;
    - (iv) Without observance of procedure required by law; or
    - (v) Unsupported by a preponderance of the evidence in a case reviewed on the record.
  - (B) The Seminole Nation Court's review of an appeal on a tort claim shall be de novo and shall be decided based on applicable law.
- (5) Legal Representation. A petitioner may be represented by legal counsel in any proceedings or adjudications conducted by the SNGA Gaming Commission or the Seminole Nation Court at the petitioner's own expense, and the Gaming Operation, or SNGA Gaming Commission may appear or be represented by legal counsel at their expense.
- (6) Standing. Only those persons or entities directly and adversely affected by an action or decision of the Gaming Operation and/or Chief Gaming Regulator shall have standing to appeal such action or decision to the Commission and/or the Seminole Nation Court, except where:
- (A) The Petitioner is seeking relief against the Chief Gaming Regulator for action unduly or unreasonably delayed or withheld where such inaction is causing articulable harm to the Petitioner. Unreasonably withheld should be liberally construed to be no less than (30) business days; or
  - (B) The Petitioner is a licensee seeking appellate review of a regulation promulgated by the SNGA Gaming Commission on the grounds that such regulation is arbitrary and capricious, constitutes an abuse of discretion, or is otherwise not in accordance with law.
- (7) Remedies
- (A) The Commission and/or the Seminole Nation Court, upon appeal, after hearing, may:

- (i) Affirm, reverse, modify or remand a matter as appropriate subject to the standard of review established in this Title;
  - (ii) Compel SNGA and/or the Chief Gaming Regulator to take an action unlawfully or unreasonably delayed or withheld; or
  - (iii) Set aside and remand a regulation of the SNGA to the Chief Gaming Regulator upon a finding that such regulation or some portion of the regulation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- (B) The Seminole Nation Court upon appeal, after hearing may:
- (i) Affirm, reverse, modify or remand a matter to the Commission, as appropriate, subject to the standard of review established in this Title; or
  - (ii) Compel the SNGA Gaming Commission to act or make a decision where an action or decision has been unduly delayed, or it may assume jurisdiction in a case before the SNGA Gaming Commission where a decision has been unduly delayed or due process has been denied.
- (C) The Seminole Nation Court upon appeal, after hearing, may award just and reasonable compensation for a personal injury or property damage upon a finding that the Gaming Operation is liable as a matter of law given all the facts and circumstances of the case as adduced at hearing of the case under applicable law, provided that:
- (i) The amount of such award shall be reduced by 10% if the tort claim is filed with the Enterprise more than ninety (90) days after the event allegedly giving rise to the claim; and
  - (ii) The amount of compensation awarded for any one person for personal injury, for any one occurrence for personal injury, or for any one occurrence for property damage may not exceed the amount of the public liability insurance each such category of personal injury or property damage maintained by the Gaming Operation for the express purposes of covering and satisfying tort claims.
- (D) The Commission and/or Seminole Nation Court upon appeal of the denial, in whole or in part, of a prize claim, after hearing, may award just and reasonable compensation if the full amount of an award determined to be due was not paid, provided that the amount of the award may not exceed the amount of the prize that the

claimant establishes he or she was entitled to be awarded nor, in any case, an amount exceeding the maximum prize available in the game or gaming machine giving rise to the dispute.

- (E) Burden of Proof. The Appellant shall bear the burden of proof in any appeal filed pursuant to this Title.
- (F) Filing Fees. Each appeal under this Title shall be subject to a non-refundable filing fee of five hundred dollars (\$500.00) to be paid to the SNGA Gaming Commission and/or Seminole Nation Court, as appropriate, which fee(s) may be waived only upon a demonstration of hardship supported by substantial evidence. The Seminole Nation Court may amend the filing fee by administrative order.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991, amended by TO 2001-12, December 1, 2001, amended by TO 2003-07, September 6, 2003; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **CHAPTER TWO LICENSING**

### **Section 201. Gaming License, Permit, or Registration Required**

(a) Persons, Entities, and Facilities Required to Be Licensed.

(1) Every –

- (A) Seminole Nation Gaming Facility where Class II or III gaming activities are conducted;
- (B) Primary Management Official;
- (C) Key Employee;
- (D) Gaming Vendor; and
- (E) Gaming Financer

shall be required to have and display prominently an appropriate, valid and current gaming License issued pursuant to the provisions of this Code.

- (2) The License for a Gaming Vendor or Gaming Financer shall cover the business entity and the Principals of that Gaming Vendor or Financer under a single License except for those Key Employees employed by the Gaming Vendor or Gaming Financer with access to gaming activities, gaming equipment, the accounts, and the gaming or accounting software at or for the Enterprise, provided that all Principals of a Gaming Vendor or Gaming Financer shall be subject to a background investigation and suitability determination in accordance with the standards applicable to Key Employees.
- (3) Any employee or Principal of a Gaming Vendor or Gaming Financer, including a manufacturer of gaming or gaming related equipment -
  - (A) Who has access to the gaming floor and/or secure or restricted areas of a Gaming Facility, including storage and maintenance areas, or who provides maintenance, repair or other service in relation to a game or gaming system; or
  - (B) Who has on-site or off-site access to hardware or software related to Gaming Activities, or who has any accounting or cash handling duties related to the Gaming Operation, wherever conducted shall be considered to be a Covered Employee and shall be required to apply for and receive a Gaming License in accord with the same licensure requirements as a Key Employee, provided that accountants and attorneys shall be exempt from licensure or

regulations when providing services covered by their respective professional licenses.

(b) Registration. Every Non-gaming Vendor providing services or goods to the Gaming Operation, other than a federally, state, or tribally regulated publicly traded public utility company, shall be subject to a requirement to register with SNGA and provide such information to SNGA as SNGA may by regulation require prior to contracting with or providing such goods and/or services to the Gaming Operation.

- (1) The Chief Gaming Regulator may, by regulation, except Non-gaming Vendors from this registration requirement where the contract amount is de minimus, or the potential for unlawful or criminal conduct is negligible.
- (2) The Chief Gaming Regulator may, by regulation, require federally, state, or tribally regulated publicly traded utility companies to register or be registered under this provision if he or she determines that there is a potential for criminal activity relating to the Gaming Operation contracting with such companies.

(c) Class I Gaming Permit. A permit issued by SNGA shall be required for the conduct of any Class I traditional forms of Indian gaming in connection with a tribal ceremony or celebration involving wagering where the aggregate total of prizes to be awarded exceeds \$10,000. Tribal social activities not involving the placement of wagers, including contests, competitions, or similar events in which prizes are awarded individually or to teams based on prowess, knowledge, or appearance, such as rodeos, powwows, sports tournaments, pageants, and other similar types of events, regardless of whether an entry fee is charged, do not constitute gaming and are expressly excluded from regulation under this Title.

(d) Work Permit. Every employee of the Gaming Operation who is not a Primary Management Official or a Key Employee shall be required to have a work permit issued by the SNGA. Such work permit shall not authorize an employee to conduct any activities requiring a License under this Title, provided that the SNGA may require any or all gaming employees to be licensed upon a finding by the SNGA that the Gaming Operation is not compliant with the restrictions on the permissible duties and functions of work permittees.

(e) Prohibition. Any other form of gaming other than those activities excepted by Section 203 of this Title conducted within the jurisdiction of the Seminole Nation is prohibited.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991, amended by TO 2003-22, December 6, 2003; amended by TO 2004-01, January 17, 2004; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **Section 202. Exemptions**

(a) Class I games, other than those requiring a permit, are exempt from the licensing, registration, and permit requirements of this Title if they -

- (1) Are traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations, or
- (2) Are social games solely for prizes of minimal value.

(b) For purposes of this section, “minimal value” shall mean an individual prize with a value no greater than \$1,000 for a single prize or \$10,000 in aggregate prizes to be awarded.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 203. Applications and Requirements for Licenses**

(a) General Requirements for Licenses.

(1) License Requirements.

- (A) A License or Temporary License (not to exceed 90 days) must be issued by SNGA to an applicant pursuant to this Title and applicable regulations before the Gaming Operation may employ a person in a Key Employee or Primary Management position.
- (B) Gaming Vendors, Management Contractors and Gaming Financers must be fully licensed by the SNGA prior to the commencement of any engagement, contract, or agreement, the delivery of any gaming goods or services, or the installation of any gaming or gaming-related equipment.
- (C) Non-gaming vendors shall register or be registered prior to commencement of any transaction, contract, or engagement with the Gaming Operation.
- (D) Failure to comply with all applicable licensure requirements by a person or entity required to be licensed pursuant to this Title shall be deemed a substantial violation and shall subject such person or entity to the enforcement authority of the SNGA.

(2) Term.

- (A) A facility License shall be valid for a term of three years.
- (B) A Primary Management Official License and a Key Employee License shall be valid for a term of two years.
- (C) A Gaming Vendor or Gaming Financer License shall be for a term of one year.

- (D) A Temporary License shall have a term as determined by SNGA, but not to exceed 90 days, provided that a Temporary License shall expire automatically upon issuance or denial of a permanent License.
  - (E) The term of a License shall start on the date it is issued and shall expire on the last day of its term.
- (3) Applicant and Licensee Responsibilities. Applicants and licensees shall be legally responsible for compliance with this Title, regulations issued under this Title, IGRA, and all relevant License provisions, conditions, or restrictions.
  - (4) Sworn Application. No License shall be issued under this Title except upon a sworn application filed with the SNGA in such form as may be prescribed by the SNGA and containing all of the mandatory information required for the License. Such form shall require agreement by the licensee to abide by all requirements and restrictions in the License, this Title, the Compact, and all applicable laws, rules and regulations.
  - (5) Withdrawal of Application. An application may not be withdrawn without the permission of the SNGA. An applicant may request to withdraw an application by submitting to the SNGA a written request for withdrawal. The SNGA shall have the right, in its sole discretion, to grant or deny a request for withdrawal. A decision to deny a request for withdrawal shall be final and unappealable.
  - (6) Continuing Duty to Provide Information. Applicants and licensees shall have a continuing duty to provide any materials, assistance, or other information required by the SNGA and to fully cooperate in any investigation conducted by or on behalf of the SNGA. If any information provided on the application changes or becomes inaccurate in any way, the applicant or licensee must promptly notify the SNGA of such changes or inaccuracies.
  - (7) Suitability Determination. The SNGA shall review every License applicant's prior activities, criminal record, if any, and reputation, habits, or associations to make a determination concerning the suitability of such applicant for employment or for a contractual, financial or other business arrangement with the Gaming Operation.
    - (A) The SNGA shall conduct an investigation sufficient to make a suitability determination under this Section. In conducting a background investigation, the SNGA or its agent shall strive to keep confidential the identity of each person interviewed in the course of the investigation and to protect confidential information provided as part of the licensing process.



- (B) No person requiring a License for employment under this Title may be employed, and no contract or other business arrangement may be entered into with a Gaming Vendor or Gaming Financer if, based on such review -
- (i) The applicant has not fully completed all required application forms, or has not provided the SNGA with such other information the SNGA has requested;
  - (ii) The SNGA determines that employment of, contracting with, or entering into a financial arrangement with the applicant or a Principal or Primary Management Official thereof, poses a threat to the public interest or to the effective regulation of gaming or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or
  - (iii) The SNGA determines that the applicant, or in the case of a Gaming Vendor or Gaming Financer, the applicant or a Principal or a Primary Management Official thereof has
    - (I) Been convicted of any felony offense;
    - (II) Been convicted of any offense of any degree within the past ten years involving an element of dishonesty, such as theft, fraud, and, for example;
    - (III) Had a gaming license denied or revoked by any licensing jurisdiction for any cause related to dishonesty, such as theft, embezzlement, fraud, cheating, or accepting bribes or kick-backs;
    - (IV) A reputation for dishonesty regardless of whether charged or convicted; or
    - (V) Provided false or misleading information, statements, or information on his or her License application,
    - (VI) Failed to disclose any information required to be disclosed on the License application; or
    - (VII) Otherwise failed to meet the suitability standard for licensure.

- (C) When the applicant is applying for a Gaming Vendor or Gaming Financer License, in addition to the reasons denoted in subsection (B) of this Section, the SNGA, based on the background investigation, may deny the applicant a License if the SNGA concludes the applicant;
    - (i) Is not sufficiently stable and capitalized;
    - (ii) Is owned, operated, or managed by persons who fail to meet the suitability standards in this Section; or
    - (iii) Has a history of performance failure or contentious business relationships.
  - (D) If, at any time, the SNGA finds that a licensee fails to continue to meet the licensure standard established in this Section, the SNGA may take appropriate steps to suspend or revoke the License.
- (8) Temporary License. The SNGA may, in its sole discretion, issue a Temporary Gaming License to Key Employees and Primary Management Officials upon the SNGA's review of their individual, completed gaming License applications, review of their fingerprints consistent with the procedures adopted by SNGA according to 25 C.F.I. § 522.2, and upon a signed, written representation by the applicant that he or she meets the standards for licensing in this Section. Such Temporary License may be cancelled or revoked and the license application denied if the SNGA finds that the Applicant does not meet the standards for licensing under this Section.
  - (9) Exclusion. Gaming Vendors shall not be eligible to receive a temporary license nor shall any gaming or related equipment be installed in any gaming facility prior to the issuance of a Gaming Vendor License by the SNGA. The Gaming Enterprise shall ensure that all Gaming Vendor contracts specify that such contract shall be null, void, and unenforceable if the Gaming vendor fails to apply for, receive, and maintain a Gaming Vendor License.
  - (10) License Requirements and Restrictions. Any License issued by SNGA may be subject to such requirements, conditions, and/or restrictions as SNGA may require, including restrictions on the areas to which the licensee may have access, restrictions on the positions a licensee may hold, requirements for reporting or submitting information to the SNGA, and such other conditions, restriction and/or limitations as the Chief Gaming Regulator deems appropriate under the circumstances.
  - (11) License contingency Terms for Employment and Business Arrangements.

- (A) An employment agreement for any persons requiring a License under this Title; and
  - (B) Business arrangements, including contracts, engagements, and agreements entered into by the Gaming Operation with Gaming Vendors or Gaming Financers and/or their Principals and/or Primary Management Officials who are required to be licensed under this Title shall include terms:
    - (i) Providing for termination if the requisite License is denied or revoked;
    - (ii) Acknowledging the licensee's duty to comply with all applicable gaming laws and regulations, including, but not limited to the Nation's internal control standards, federal laws and regulations, and the Compact; and
    - (iii) Providing consent to the regulatory jurisdiction of the SNGA.
- (12) Non-Assignability of License. Any License issued pursuant to the provisions of this Title is valid only for the person(s) or entity(ies) shown on the face thereof. Any such License is not assignable or otherwise transferable to any other person or entity or, in the case of a facility License, for any other location unless authorized and approved by the SNGA.
- (13) Employee License Site Limitation. An Employee License or Work Permit shall be specific to each Gaming facility unless SNGA, authorizes a specific licensee or group of licensees to conduct activities covered by their Licenses at other Gaming facilities, which authorization shall be indicated on the Employees' badge(s).
- (14) Duty of Licensee to Keep Informed of Requirements. Acceptance of a License or renewal thereof, or restriction imposed thereon, by a licensee constitutes an agreement on the part of the licensee to be bound by all the regulations and/or restrictions of the SNGA and by the provisions of this Title as the same are now or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep informed of the contents of all such regulations, provisions, and conditions, and ignorance thereof shall not excuse the violation.
- (15) License Revocable. A Gaming License issued under this Title is a revocable privilege, and no holder thereof shall be deemed to have any rights therein or thereunder.
- (A) A License issued under this Title may be revoked by SNGA -

- (i) For cause related to violations of the Seminole Nation Code or regulations, the Compact, NIGC regulations, other violations of law or Gaming Enterprise procedures, or any other wrongful conduct or behavior of a licensee;
  - (ii) Upon a finding that the licensee is not suitable to hold a License under the criteria set forth in Section 203(a)(7); or
  - (iii) For any actions or inactions that present an actual and imminent threat or danger to the public health and safety of a Gaming facility licensed under this Title or its patrons or to the integrity of the games played at such facility.
- (B) A License may be suspended by the SNGA for such period of time as the SNGA determines appropriate pending investigations, hearings, and other processes for consideration of a License.
- (C) The burden of proving qualifications to hold any License rests at all times on the licensee.
- (D) The SNGA shall have the duty of continually observing the conduct of all licensees to the end that Licenses shall not be held by unqualified, disqualified, or unsuitable persons or entities, or persons or entities whose operations are conducted in an unsuitable manner.
- (E) The SNGA may review any individual's or an entity's License at any time.
- (16) Violations. Violation of any provisions of this code or any rules or regulations of the SNGA by a licensee, his agent, or employee shall be deemed contrary to the public health, safety, morals, good order, and general welfare of the Seminole Nation and the inhabitants of the Seminole Nation, and shall be grounds for refusing to grant or renew a License, grounds for suspension or revocation of a License, or grounds for the filing by SNGA of a civil action for forfeiture of a License in the Seminole Nation Court.
- (17) Fees. There shall be a fee or methodology for determining a fee established for each type of License. All License fees shall be paid to and retained by SNGA to offset compensation and expenses of SNGA.
- (18) Wearing License Identification Cards. All licensees shall wear, in plain view, identification cards which include a photograph of the employee, his or her first name, a four-digit identification number unique to the License issued to the licensee, a tribal seal or signature verifying the official issuance of the card, and the date of expiration.

- (19) License Renewal. An application to renew a facility License shall be submitted 150 days before the expiration of a current facility License, and an application to renew any other License under this Title shall be submitted 90 days prior to the expiration of a current License. Any renewal application shall be subject to the same requirements for licensing as a new License under this Title except that the SNGA may, by regulation, require an update of the information required for the License from the first application to the extent that the information has changed.
- (b) Facility License.
- (1) License Requirements. The SNGA shall issue a separate facility License to each place, facility, or location where Gaming takes place under this Title, provided:
- (A) Documentation is provided demonstrating that the facility is located, or will be located if it is to be constructed, on the Nation's Indian Lands;
  - (B) The Facility is of sound physical structure with adequate, safe, and operational plumbing, electrical, heating, cooling and ventilation systems in place;
  - (C) The Gaming Operation has provided a complete description of the premises and the name and address at which gaming will be conducted;
  - (D) The Facility has been inspected and approved for safety by a qualified building and fire inspector approved by SNGA;
  - (E) The facility is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the SNGA;
  - (F) The Gaming Operation has prepared and the facility is subject to an emergency preparedness plan approved by SNGA;
  - (G) The Gaming Operation has submitted all documentation required by applicable regulations of the NIGC for a new facility or, for renewal of a License, such information required for reissuing a License;
  - (H) The Gaming Operation has provided such other information as the SNGA shall require by regulation; and
  - (I) The Gaming Operation has paid all applicable License and regulatory fees and assessments.

- (2) Requirements of a Licensee. All facility licensees shall comply with orders, directives and regulations of the SNGA, which, at a minimum, shall include the following requirements:
- (A) The facility shall at all times be maintained in an orderly, clean and neat condition, both inside and outside the premises of the facility.
  - (B) The facility shall be subject to patrol by the Nation's security and law enforcement personnel and, when authorized, local and state law enforcement and the licensee shall cooperate at all times with such security and law enforcement officials.
  - (C) The facility shall be open to inspection by SNGA at all times.
  - (D) The facility shall continuously meet all applicable environmental, public health, and safety standards as established by the SNGA or other authorized governmental units of the Nation.
  - (E) The Gaming Operation shall pay all appropriate regulatory fee assessments to the NIGC pursuant to 25 U.S.C. §2710(b)(4)(B)(i)(IV).
  - (F) The Gaming Operation shall pay all regulatory fees, fines and assessments as may be applicable.
  - (G) The facility shall operate without any discrimination in any gaming operations by reason of race, color, sex, or creed, provided, however, that nothing herein shall prevent the licensee from granting hiring preferences to members of the Seminole Nation or other federally recognized Indian tribes.
- (3) Application and Renewal Deadlines. Applications for a Facility License shall be submitted at least 180 days prior to the initial conduct of business, and at least ninety (90) days prior to its expiration if renewal is sought;
- (4) Display of License. Every Facility licensee shall display in a prominent place a current and valid License for that location.
- (5) License Unassignable. If the Gaming Operation elects to move operation of a gaming facility to a different location and operate under the same trade name, such action shall nonetheless be deemed to require the issuance of a new Gaming Facility License for purposes of this Section and the SNGA shall issue a new license in accordance with this Section.
- (6) Penalties for Violations. Facility licensees may be fined or have their privilege to conduct gaming activities within the Seminole Nation and their License to game suspended or revoked for a period not to exceed 90 days, or, in the event of a condition creating imminent jeopardy to public

health and safety, such longer period of time as may be required to abate such condition; or may be subject to such other penalties or orders as may be appropriate by the SNGA and the Courts of the Seminole Nation if found in violation of any of the requirements of this Act, regulations issued under this Act, the Compact, or other applicable laws including IGRA.

(c) Key Employee, Primary Management Official or Other Individual License.

- (1) License Requirement and Scope. The SNGA shall issue a License to each Key Employee and Primary Management Official who qualifies for and would require a License under this Title. The License shall grant the applicant the revocable privilege of working in a position requiring a License under this Title.
- (2) Application and Licensing Deadlines. Before a Key Employee or Primary Management Official begins work, a completed application for a License shall be provided to SNGA by the applicant, which application shall contain all of the information required by this Section, and SNGA shall conduct the background investigation and make the suitability determination described in this Section to determine whether or not to grant the License.
- (3) Jurisdiction and Jurisdiction Statement. Acceptance of a License by a Key Employee or Primary Management Official shall constitute acceptance by that individual of the jurisdiction of SNGA, and the Seminole Nation Courts for all licensure actions and for any violations of the terms of that License, this Title, and the Seminole Nation Code and regulations.
- (4) Notice of Consent and Signature. The License Application for a Key Employee or Primary Management Official shall provide notice of the consent to jurisdiction of SNGA, and the Seminole Nation Courts required by this Title and shall require a separate signature immediately below the notice by the applicant accepting such jurisdiction.
- (5) Privacy Act Notice and Notice Regarding False Statements. The Application form for Key Employees and Primary Management Officials shall include the statements required to be on such forms under 25 C.F.R. §§ 556.2 and 556.3.
- (6) Minimum Application Information Required. The SNGA shall require from each Primary Management Official and from each Key Employee all of the following information as part of their License application:
  - (A) Full name, other names used (oral or written) including any aliases by which applicant has ever been known, social security number(s),

- (B) Birth date, place of birth, citizenship, gender, all languages known (spoken or written);
- (C) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (D) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (d)(3) of this Subsection;
- (E) Current business and residence telephone numbers;
- (F) Military service history;
- (G) A description of any existing and previous business relationships with Indian Nations, including ownership interests in those businesses;
- (H) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;
- (I) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted;
- (J) A description of any disciplinary charges filed by any state or tribal regulatory authority, whether or not discipline was imposed.
- (K) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- (L) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
- (M) For each criminal arrest, charge, or proceeding (excluding minor traffic charges), whether or not there is a conviction, identification of the criminal arrest, charge, or proceeding, the name and address of the court involved, and the date and disposition;
- (N) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational



license or permit, whether or not such license or permit was granted;

- (O) A current photograph;
  - (P) For the applications of Primary Management Officials, including the General Manager of the Gaming Enterprise and the Managers of each Gaming Facility, financial statements;
  - (Q) Fingerprints consistent with procedures adopted by the SNGA according to 25 C.F.R. § 522.2(h); and
  - (R) Any other information the SNGA deems relevant.
- (7) Background Investigation. A background investigation for each prospective Primary Management Official and Key Employee requiring a License shall be conducted by the SNGA.
- (A) Required Actions. The background investigation must include the following actions:
    - (i) Verification of the applicant's identity and the information submitted by the applicant on the License application;
    - (ii) Contacts with the applicant's personal and business references;
    - (iii) A civil, criminal, public records, and credit history check; and
    - (iv) Forwarding the applicant's fingerprint card to the NIGC to be processed by the Federal Bureau of Investigation's National Criminal Information Center. The SNGA may submit an applicant's fingerprint card to any additional tribal, local, or state criminal history check system as the SNGA deems necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the applicant's application file.
    - (v) The SNGA by regulation may conduct such additional investigative activities as it may deem appropriate.
    - (vi) The SNGA may issue a notice to a License applicant for an interview or hearing at any time during the investigation to secure any additional information it may require in determining the applicant's suitability for a License.

- (vii) Upon completion of the investigation, the staff shall prepare a written report and recommendation in relation to the applicant's suitability and the SNGA shall then determine whether to grant or deny the License.
- (B) Retention of Records. The SNGA shall retain License applications for Key Employees and Primary Management Officials and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.
- (C) Submissions to NIGC and Granting Licenses.
  - (i) The SNGA shall forward to the NIGC a completed license application when a Key Employee or Primary Management Official begins work at a gaming operation.
  - (ii) The SNGA shall forward an investigative report on each background investigation to the National Indian Gaming Commission within sixty (60) days after an employee begins work in accordance with the requirements established by the NIGC by regulation or written instructions.
  - (iii) An investigative report shall include all the following:
    - (I) Steps taken in conducting a background investigation;
    - (II) Results obtained;
    - (III) Conclusions reached; and
    - (IV) The basis for those conclusions.
- (D) Suitability Determination. The SNGA shall submit with the report a copy of the suitability determination made under Section 203(a)(7) of this Title.
- (E) License Denial Actions. If a License application is denied, the SNGA:
  - (i) Shall notify NIGC; and
  - (ii) May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming

Commission for inclusion in the Indian Gaming Individuals  
Records Systems.

- (8) Granting Gaming Licenses to Key Employees and Primary Management Officials.
    - (A) If within a thirty (30) day period after the NIGC receives an application and investigatory report as provided in the previous Subsection, the NIGC notifies the SNGA that it has no objection to the issuance of a License pursuant to such applicant; the SNGA may issue a License to such applicant.
    - (B) The SNGA shall respond to a request for additional information from the NIGC Chairman concerning an applicant who is the subject of an investigatory report. Such a request shall suspend the 30-day period under this subsection until the Chairman receives the additional information.
    - (C) If, within the 30-day period described above, the NIGC provides the SNGA with a statement itemizing objections to the issuance of a License to a Key Employee or to a Primary Management Official, the SNGA shall reconsider the application, taking into account the objections itemized by the NIGC. The SNGA shall make the final decision whether to issue a License to such applicant.
  - (9) Notice by NIGC. If, at any time after the issuance of a gaming License to a Key Employee or Primary Management Official, the SNGA receives from the NIGC reliable information indicating that the licensee is not eligible for employment under Section 203(a)(7), the SNGA shall suspend such License and shall notify the License in writing of the suspension and the proposed revocation.
    - (A) The SNGA shall notify the licensee of a time and a place for a hearing on the proposed revocation of a License.
    - (B) After a revocation hearing, the SNGA shall decide to revoke or to reinstate the License. The SNGA shall notify the National Indian Gaming Commission of its decision.
  - (10) Forwarding Covered Employees Application to the State Compliance Agency. Upon obtaining the required application information from a Covered Employee, the SNGA, upon request, shall provide a copy of it to the SCA along with any determinations made with respect to the issuance or denial of a temporary or permanent License.
- (d) Gaming Vendor and Gaming Financer Licenses.

- (1) License Requirement and Scope. The SNGA shall issue a License to each Gaming Vendor and Gaming Financer that qualifies for a License under this Title. The License shall grant the applicant the revocable privilege of contracting with or entering into a financing arrangement or other business arrangement with the Gaming Operation.
- (2) Application and Licensing Deadlines. Before a Gaming Vendor or Financer may contract, enter into a financing arrangement, or enter into any other business arrangement with the Gaming Operation, a completed application for a License shall be provided to SNGA by the applicant, which application shall contain all of the information required under this Section and SNGA shall conduct the background investigation and make the suitability determination described in this Section to determine whether or not to grant the License.
- (3) Application Information Required. The SNGA shall by regulation establish application information requirements for Gaming Vendors and Gaming Financers sufficient to make the determinations for issuing or denying a license in Section 203(a)(7).
- (4) Limiting Information Required. The SNGA may limit, as the SNGA deems appropriate, the types of information required from an applicant for a Gaming Financer License where:
  - (A) The information required of applicants, except as limited by paragraph (A) above, shall be sufficient to probe the Gaming Vendor's or Gaming Financer's: legal structure and ownership interests; locations, history, reputation and operation as a business entity, including locations and nature of the business; organizational structure; officers; the civil and criminal history of the applicant, including any litigation, court or administrative tribunal determinations, and sanctions; financial stability, capitalization, and capability; level of responsibility for completing its contractual commitments and guaranteeing results; its customer base; and its reputation;
  - (B) The Gaming Vendor or Gaming Financer is an individual, the applicant shall also submit an application with all the information required for licensure as a Primary Management Official under Subsection (c) of this Section; and
  - (C) The Gaming Vendor and Gaming Financer is not a natural person, but is structured as a corporation, partnership, sole proprietorship with multiple employees, or other legal entity for the purpose of conducting business, the applicant, with the possible limitation in paragraph (a), above, shall also submit for purposes of determining whether to grant or deny a License, all of the information required

for licensure as a Key Employee under Subsection (c) of this Section for any Covered Game Employee or Principal who is not required to have an individual License and for such other officers of the entity as the SNGA may deem necessary to understand the organization and persons with which the Seminole Nation would be dealing under the License.

- (5) Background Investigation - Gaming Vendor or Gaming Financer. A background investigation for each prospective Gaming Vendor and Gaming Financer requiring a License shall be conducted by the SNGA.
  - (A) The background investigation must include all of the following actions:
    - (i) Verification of the applicant's identity and the information submitted by the applicant on the License application, including the information provided by Covered Employees and Principals;
    - (ii) Contacts with the applicant's personal and business references;
    - (iii) A civil, criminal, and credit history check; and
    - (iv) A background investigation of all individuals who are a Principal, Key Employee, or Primary Management Officer of the Gaming Vendor or Gaming Financer in accordance with Subsections 203(a) - (c) of this Section.
  - (B) The SNGA may conduct such additional investigative activities as it may require by rule or regulation.
  - (C) The SNGA may issue a notice to a License applicant for an interview or hearing at any time during the investigation to secure any additional information it may require in determining the applicant's suitability for a License.
  - (D) Upon completion of the investigation, the staff shall prepare a written report and recommendation in relation to the applicant's suitability under Section 203(a)(7) of this Title and the SNGA shall then determine whether to grant or deny the License.
  - (E) Record Retention. The SNGA shall establish a record retention schedule for Gaming Vendor and Financer applications and background investigation records.
- (6) Notifications to the State Compliance Agency. The SNGA, when requested, shall advise the SCA of:

- (A) All financing and loan transactions with respect to covered games or supplies in which the amount exceeds \$50,000 in any twelve-month period and make them available for SCA review upon request; and
  - (B) Approval of any Management Contract approved by the Chair of the National Indian Gaming Commission.
- (e) Adverse Licensing Action Procedure.
  - (1) The SNGA shall notify an applicant or licensee, in writing, of the SNGA's preliminary decision to deny an application for a License or to suspend, revoke, limit, modify, restrict, condition or cancel the licensee's gaming license, which notice shall inform the licensee of the basis for the SNGA's preliminary decision and of any due process rights available to the applicant or licensee.
  - (2) An SNGA decision to limit, modify, restrict, condition, or cancel a License shall not be deemed an adverse action requiring a hearing and shall not be appealable except upon a showing, supported by substantial evidence, that such decision was the result of bias, prejudice, or other wrongful purpose; provided that the SNGA may in its discretion accord a licensee an opportunity to show cause why the License should not be limited, modified, restricted, conditioned, or cancelled. The SNGA may, in its sole discretion, grant an oral hearing or require a written submission.
  - (3) Unless otherwise provided in this Title, an applicant or licensee, as appropriate, shall, upon written petition, be entitled to a hearing before the Chief Gaming Regulator or another hearing officer designated by the Chief Gaming Regulator prior to denial of an application or the revocation or suspension of a License.
  - (4) Denial of a license may be contested by an applicant and the revocation or suspension of a license may be contested by a licensee as an adverse action under the procedures set out below:
    - (A) To invoke the right of hearing, the applicant or licensee must submit a written petition for hearing to the SNGA within ten (10) days from the date of service or delivery of the SNGA's notice of proposed denial or revocation. Such notice may be served by registered or certified mail or it may be personally served on the Applicant or licensee.
    - (B) The Chief Gaming Regulator may, in his or her discretion, direct the Gaming Operation to place a licensee on administrative leave, with or without pay at the discretion of management, during the pendency of the matter.

- (5) Right to Counsel. An Applicant or licensee subject to a notice of adverse action shall be entitled to be represented by an attorney and must be present and participate in the proceeding.
- (6) Waiver of Right to Hearing. If the applicant or licensee fails to invoke the right to a hearing within ten days from the date the SNGA's notice or proposed denial or revocation is delivered to or served upon the applicant or licensee, such inaction shall operate as a waiver of the right of appeal, in which case, the Chief Gaming Regulator's preliminary decision shall be entered as a final order not subject to further appeal.
- (7) Hearing Date. If the applicant or licensee invokes the right to a hearing, the Chief Gaming Regulator shall set a date for such hearing to take place within sixty (60) days unless extended by mutual consent of the Chief Gaming Regulator and the respondent.
- (8) Hearing Procedure. Hearings under this Section shall be conducted in accordance with the requirements of Section 305(b) of this Title.
- (9) Right to Appeal. If, after such hearing, the Chief Gaming Regulator renders a final adverse determination with regard to a gaming license, the licensee may appeal the decision to the SNGA Gaming Commission.
- (10) Prohibition on Limitations. Nothing in this Section shall limit the Chief Gaming Regulator's authority to summarily issue an order directing action by a licensee, an order to cease and/or desist, or an order suspending a Gaming License upon a finding that such order is necessary to:
  - (A) Cure an imminent threat to the integrity of gaming at the Gaming Enterprise;
  - (B) Protect the Nation's property or assets; or
  - (C) Ensure the public health and safety of patrons and employees.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-04, February 24, 1994; amended by TO 2001-12, December 1, 2001; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

#### **Section 204. Registration of Non-Gaming Vendors**

(a) Each Non-Gaming Vendor required to be registered pursuant to Section 201(b) of this Title shall provide the following information in a form or format as may be required by the SNGA:

- (1) Name of the Non-Gaming Vendor;

- (2) Address of the Non-Gaming Vendor's principal place of business;
- (3) Form of legal organization (such as a corporation, partnership, LLC, or sole proprietorship), and state where chartered;
- (4) Any state or tribal identification number providing access to the state-registered or tribally-registered organizational papers;
- (5) The name and business address of the agent or person responsible for providing the goods or services;
- (6) If the Non-Gaming Vendor is not a publicly traded corporation, the name of the Principal of the on-Gaming Vendor,
- (7) The nature of the goods and services provided; and
- (8) Such additional information as the SNGA may require by regulation.

(b) The Chief Gaming Regulator shall by regulation and procedures establish the time and submission requirements for this Section.

(c) SNGA, at its discretion, may conduct a background investigation on a Non-Gaming Vendor required to be registered under this Chapter.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-04, February 24, 1994; amended by TO 2001-12, December 1, 2001; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 205. Applications and Requirements for Class I Gaming Permits**

An applicant for a Class I gaming permit pursuant to Section 201(c) shall provide his or her name, a brief description of the event, an estimate of the total amount of prizes, and such additional information in such form as may be established by regulation under this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-04, February 24, 1994; amended by TO 2001-12, December 1, 2001; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 206. Applications and Requirements for Work Permits**

Each employee of Gaming Operation required to have a work permit pursuant to Section 201(d) of this Title shall provide his or her name, residential address, phone number, Social Security Number, and such additional information in such form as it may require. SNGA may, at its



discretion, conduct a background investigation on a person required to hold a permit under this Chapter.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-04, February 24, 1994; amended by TO 2001-12, December 1, 2001; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 207. Inspection of Premises**

The premises of a Gaming Facility, including buildings and property connected physically or otherwise within the Gaming Facility, as well as parking areas and vehicles used in connection therewith, shall at all times be subject to inspection by or on behalf of SNGA. At any time during which a licensed Gaming or related administrative activity is being conducted on the premises, no advance notice shall be required from the SNGA to:

- (a) Make an account of all monies on the premises and all monies received during the operation of the licensed activity located on the premises;
- (b) Inspect all receipts for prizes which have been awarded by the Gaming Enterprise at the licensed facility;
- (c) Inspect any other records, accounts or other related information of the licensee or of any employee who directly participates in the management, operation, or promotion of a licensed activity; or of any employee of the licensee; and
- (d) Inspect equipment of any nature used in connection with gaming activities, including interior areas of such equipment, parts, and components.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **CHAPTER THREE**

### **CIVIL AND CRIMINAL ACTIONS, PENALTIES, AND ENFORCEMENT**

#### **Section 301. Civil Violations**

(a) Generally. In addition to other civil and criminal acts that may be regulated or prohibited by this Title, other Seminole Nation law, or applicable federal or state law, the following prohibited activities shall constitute civil violations under this Title and may subject any person or entity subject to the enforcement authority of the SNGA as provided in this Title:

- (1) Violations of any License terms, restrictions, and limitations by a licensee;
- (2) Cheating in any form, including, but not limited to:
  - (A) Altering or misrepresenting the outcome of gaming or another event on which wagers have been made after the outcome of such gaming or event has been determined but before such outcome is revealed to the players;
  - (B) Placing or increasing a bet or wager after acquiring knowledge of the outcome of the gaming or event which is the subject of the bet or wager;
  - (C) Altering, concealing, or marking cards;
  - (D) Aiding any person in acquiring knowledge about of the forms of cheating referred to in Section 301(a)(2) of this Title for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;
  - (E) Altering or tampering with any gaming equipment;
  - (F) Using slugs, tokens, or forged or fraudulent coins or instruments for any gaming machine or to place a wager in a card game;
  - (G) Aiding another person to cheat in any manner;
  - (H) Violating any rules of play;
  - (I) Using any device, apparatus, or contraption to determine or alter the outcome of play or change the odds of any game, including any calculator, computer, or other electronic or mechanical device to assist in projecting the outcome or odds of such gaming, to keep track of or analyze cards, or to change probabilities of any game or the playing strategies regularly utilized in such gaming;

- (J) Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager; or
  - (K) Manipulating any component or part of a game or gaming equipment in a manner contrary to the designed and normal operational purpose for such component or part, so as to affect the outcome of the game.
- (3) Fraud or theft from the gaming facility by any patron, employee, agent, guest, vendor or person, including, but not limited to:
- (A) Claiming, collecting, or attempting to claim, collect or take, money or anything of value from the Gaming Enterprise, Gaming Facility SNGE or Seminole Nation Gaming Enterprise to which one is not entitled; or claiming, collecting or taking an amount greater than the amount actually won in such game;
  - (B) Defrauding the Nation, any licensee, or any participant in any gaming or promotional activity;
  - (C) Making any untrue statement of a fact, or failing to state a fact necessary, in order to commit a fraud; or
  - (D) Otherwise engaging in any act, practice, or course of conduct as would operate as a fraud upon any person;
- (4) Delay, maneuvering, or taking action of any kind to unlawfully avoid paying proceeds of gaming properly owed to the Seminole Nation;
- (5) Participating in or operating any gaming activity not authorized under this Title;
- (6) Enticing or inducing another person to go to any place where gaming is conducted or operated in violation of the provisions of this Title, with the intent that the other person play or participate in such gaming;
- (7) Providing false or misleading information or making any false or misleading statement with respect to an application for employment or for any license, certification or determination provided for in this Title;
- (8) Providing false or misleading information or making any false or misleading statement to the Nation, SNGA, or the Gaming Operation in connection with any contract for services or property related to gaming;
- (9) Providing false or misleading information or making any false or misleading statement in response to any official inquiry by the SNGA or its agents;

- (10) Offering or attempting to offer any money or thing of value to an official or employee of the Gaming Operation, SNGA, or a licensee to induce such official or licensee to act, or refrain from acting, in a manner contrary to the official duties of the licensee under this Title, regulations promulgated by the Seminole Nation including those promulgated under this Title, Seminole Nation or Federal law, or the Compact;
- (11) Acceptance by an official or employee of the Gaming Operation, SNGA, or a licensee of any money or value given to such organization or licensee for the purpose of inducing the organization or licensee to act, or refrain from acting, in a manner contrary to the official duties of the organization or licensee under this Title, Seminole Nation or federal law, or the Compact;
- (12) Falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to the Gaming Operation in ways other than is provided for in approved internal control procedures;
- (13) Taking any action which interferes with, impedes, or prevents the Gaming Operation, SNGA, or the General Council from fulfilling its duties and responsibilities under this Title, Title 8, SNGA regulations, IGRA, or the Compact; and
- (14) Entering into any contract, or making payment on any contract for the delivery of goods or services to a Gaming Operation, when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated.

(b) Gaming Management. In addition to any other violation set forth in Section (a) of this Section, it shall be a violation of this Title for any gaming manager, employee, or other responsible person or Nation official to:

- (1) Fail to keep appropriate books and records sufficient to substantiate the income and expenses and to verify the propriety of all expenditures and disbursements by any component of the Gaming Operation or activity owned or operated by the Gaming Enterprise;
- (2) Falsify any books or records related to any transaction connected with the holding, operating, or conducting of any Gaming activity or gaming promotion;
- (3) Make any unauthorized payments or disbursements;
- (4) Convert for one's personal use any funds, property, or other assets of the Gaming Operation;
- (5) Place unlicensed or unauthorized Gaming equipment on the Gaming floor or permit the play of unauthorized games;

- (6) Fail to report observed violations of this Title to the SNGA;
- (7) Fail to comply with any order or directive of the SNGA; or
- (8) Fail or refuse to report any matter so required to be reported to the SNGA by this Title.

(c) **Duty to Report.** It shall be a duty of the Gaming Operation to refer any suspected violations of this Title to SNGA.

(d) **Non-exclusive action.** In addition to civil law sanctions under this Title, the Seminole Nation may exercise any of its police powers or pursue other available sanctions including criminal sanctions for civil violations under this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 302. Criminal Violations**

(a) **Criminal Violations.** The Actions enumerated in Section 301 shall also constitute criminal offenses if committed knowingly or intentionally.

- (1) Any person subject to the criminal jurisdiction of the Nation who commits such offense may be criminally prosecuted by the Nation in Seminole Nation Court and upon conviction for such offense(s) may be sentenced to imprisonment for a period not to exceed 365 days or a fine not to exceed \$5000.00 or both such fine and imprisonment for each offense committed, plus costs.
- (2) Any person not subject to the criminal jurisdiction of the nation who commits an act prohibited by this Section shall be subject to a criminal referral to the appropriate law enforcement agency for possible prosecution under applicable state or federal laws.

(b) **Duty to Report.** It shall be the duty of the Gaming Operation and all licensees to report any suspected criminal activity to the appropriate law enforcement agency and SNGA, and for SNGA to report any suspected criminal activity to the appropriate law enforcement agency.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 303. Civil Sanctions**

(a) Any person, Gaming Vendor, Gaming Financer, or other entity that engages in activities on property subject to the provisions of this Title or operates under a License issued under this Title in violation of this Title, regulations promulgated under this Title, the terms of a

License issued under this Title, IGRA, or the terms of the Compact shall be subject to the enforcement authority of the SNGA, which may assess civil sanctions pursuant to this Title

(b) Any person who unlawfully trespasses upon any premises licensed under this Title may be permanently excluded from the premises and/or be subject to a civil suit by the Seminole Nation and/or the Gaming Operation

(c) The SNGA, at its discretion, may institute an enforcement proceeding against any person or entity Licensed under this Title. In addition to any actions the SNGA may take pursuant to Chapter 2 of this Title related to the denial, revocation, suspension or other action related to a License issued under this Title, the SNGA by order may:

- (1) Impose a formal or informal reprimand, issue a command or order to cease and desist, or assess a monetary penalty not to exceed the following amounts;
  - (A) \$25,000 per violation per day if the violator holds a License issued under this Title and is a Gaming Vendor, Gaming Financer, or a Primary Management Official;
  - (B) \$25,000 per violation per day if the violator is engaged in or has taken actions requiring that it be licensed under this Title as a Gaming Vendor, Gaming Financer, or a Primary Management Official, and has not obtained such a License;
  - (C) \$5,000 per violation per day if the violator is a Key Employee;
  - (D) \$5,000 per violation per day if the violator is taking actions requiring that he, she, or it be licensed as a Key Employee under this Title, but the violator has not obtained such a license; or
  - (E) \$5,000 per violation per day if the violator is otherwise subject to the civil jurisdiction of the Seminole Nation.
- (2) Issue an order:
  - (A) Compelling a person to act in a lawful manner or to cease and desist from acting in an unlawful or inappropriate manner.
  - (B) Prohibiting a violator from conducting business with the Gaming Operation or entering onto the premises of a gaming facility operated by the Gaming Enterprise.
  - (C) Prohibiting any officials and/or employees of the Gaming Operation from conducting business with a violator or allowing entrance by a violator to the facilities operated by the Gaming Operation.

- (D) Prohibiting any officials and/or employees of the Gaming Operation from paying any unlicensed or unregistered vendor for goods or services provided to the Gaming Operation.
  - (E) Requiring the seizure of property from the violator used in a violation of this Title. Such seized property shall become the property of the Seminole Nation.
  - (F) Prohibiting violators from trespassing on premises licensed under this Code.
  - (G) To forcibly close a Gaming Facility found to be operating in substantial violation of the law.
  - (H) Requiring winnings found to have been received in violation of this Code to be forfeited and order them to become property of the Seminole Nation.
- (3) Enter into a consent decree with an alleged violator for purposes of resolving a violation and agreeing to a sanction.

[HISTORY: Enacted by TO 86-02; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

#### **Section 304. Investigations and Examinations of Violations**

(a) **Investigations Authorized.** In the event that the SNGA obtains information or otherwise suspects that a person or entity, including a licensee, has violated any provision of this Title, IGRA, the terms of the Compact, regulations issued under this Title, or the terms, conditions, and limitations of a License issued pursuant to this Title, the SNGA may investigate the matter.

(b) **Scope of Authority.** In conducting an investigation under this Section, the SNGA shall have broad authority and may make inquiries, review information, take depositions, conduct hearings, and issue subpoenas compelling attendance, testimony, or the production of documents as may be needed in the performance of the SNGA's investigative duties and functions.

(c) **Removal of Records and Equipment During Inspection.** If the SNGA finds that there is a reasonable probability that the provisions of this Title, including any amendments thereto or any of the rules passed by the SNGA have been or are being violated by a licensee or its employees, it may move any and all potentially relevant records and equipment, parts thereof, devices, or other things(s) to another location or locations for further inspection or investigation. Each such record, piece of equipment, part thereof, or other thing(s) so removed shall be returned to the premises or to the address of the licensee within thirty (30) business days (not counting holidays when nation offices are legally closed) unless the SNGA determines that the records, equipment, devices, or other thing(s) so removed are necessary for an ongoing investigation

and/or evidence of possible violations of this Title or regulations issued thereunder by the licensee, by employers of the licensee or by operators of the licensed facility or activity. The SNGA shall notify the licensee of the reasons said property or thing(s) are to be so held.

[HISTORY: Enacted by TO 86-02; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 305. Civil Process**

(a) Preliminary Notification of Violations.

- (1) Whenever the SNGA determines that a civil violation under this Chapter has occurred and a person or entity, including all licensees, subject to the civil jurisdiction of the Seminole Nation, has violated this Title, regulations promulgated under this Title, or any laws that this Title authorizes SNGA to monitor and enforce, the SNGA shall issue a preliminary notice of violation to that person or entity. Such notice shall:
  - (A) Identify the alleged violator or violators;
  - (B) Identify the alleged violation or violations;
  - (C) Describe the steps necessary to effect a cure, if cure is available;
  - (D) Propose a civil sanction for the alleged violation or describe the range of sanctions that may be imposed by the SNGA; and
  - (E) Identify the due process steps available to alleged violator to accept or contest the allegation of violation, to present a proposed cure, where cure is possible, or to accept or contest the imposition of the proposed sanction.
- (2) The due process steps available under this Section shall include an offer to the alleged violator to request a hearing to show cause why the sanction should not be imposed.
- (3) The written petition requesting a hearing may request that the hearing be oral or conducted by the submission of evidence, affidavits, argument, and, if applicable, a description of any mitigating circumstances.
- (4) If the alleged violator does not submit a petition requesting a hearing within the time allowed, the Chief Gaming Regulator's preliminary determination and proposed sanction shall be deemed final and shall not be further appealable.

(b) Hearings. If a hearing is granted pursuant to the terms of Section 203(e) or this Subsection:



- (1) It shall be conducted pursuant to regulations promulgated by the SNGA.
  - (A) Such regulations procedures shall include –
    - (i) Provisions for service of process, motions, orders, decisions and other papers or the signing of same; the counting of days; and the rights of an applicant, licensee, or alleged violator under this Title;
    - (ii) Provisions concerning discovery and the presentation of evidence;
    - (iii) The handling of confidential materials;
    - (iv) Procedure for the conduct of hearings; and
    - (v) Such other matters as the Chief Gaming Regulator considers appropriate to the proper functioning of such hearings.
  - (B) Such procedures may also include provisions for deciding whether a hearing is to be an oral hearing or one conducted based on the written record submitted by the respondent.
- (2) Ex parte communications with the SNGA by or on behalf of an applicant, licensee or alleged violator subject to a hearing under this Section shall be prohibited and no person or party shall act to unduly influence the outcome of any matter pending in such a hearing.
  - (A) Any employee of SNGA who receives an ex parte communication shall immediately report such communication to the SNGA's legal counsel.
  - (B) Violation of this bar on ex parte communications shall be a separate violation of this Title and a person subject to the civil authority of the Seminole Nation engaging in such ex parte communication shall be subject to civil sanctions under this Section.
  - (C) Nothing in this Section shall prohibit the applicant or licensee from communicating with the SNGA's legal counsel, its investigators, or other authorized personnel or agents.
  - (D) Parties to all hearings governed by this Section may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his or her attendance has been waived, in writing, by the Chief Gaming Regulator.

- (3) All SNGA hearings on a matter subject to such hearings shall be on the record, which testimony shall be recorded by a duly certified court reporter or by means of audio recording and which may be used by the SNGA as evidence in any proceeding or matter before the SNGA.
- (4) Failure of a respondent to appear and testify at the designated time and place shall constitute a waiver of the applicant's, licensee's, or other respondent's right to a hearing and the Chief Gaming Regulator shall enter a final, unappealable, order in the matter, provided that the Chief Gaming Regulator, within his or her sole discretion may excuse a respondent's failure to appear for good cause upon respondent's request if such request is made within 24 hours from the date and time set for hearing.

(c) **Final Determination.** The Chief Gaming Regulator shall make a final determination on all matters appealed under this Section, which determination shall be in writing and mailed or delivered to the respondent.

(d) **Appeals.** A final determination of the Chief Gaming Regulator under this Section shall be subject to appeal to the SNGA Gaming Commission if timely filed and in accordance with the provisions of Sections 109, 110, and 111 of this Title and the procedures authorized to be adopted thereunder.

[HISTORY: Enacted by TO 86-02; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 306. Agent for Service of Process for Gaming Vendors and Financing Vendors**

(a) Each Gaming Vendor and Financing Vendor who or which is not a Seminole Nation resident or resident corporation shall designate a natural person, who is a resident living in the Seminole Nation and who is 18 years of age or older, as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the licensee. The name and business address where service of process and delivery of mail can be made and the home address of such designated resident agent shall be filed with the SNGA.

(b) The Chief Gaming Regulator may issue subpoenas for persons, records and things as may be needed carry out the SNGA's duties and functions under this Title.

[HISTORY: Enacted by TO 86-02; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 307. Production of Records; Hearings**

(a) No applicant, licensee, or employee of a licensee shall neglect or refuse to produce records or evidence under his or her control, or to give information upon proper and lawful demand by the SNGA, or shall otherwise interfere with any proper and lawful efforts by the SNGA to produce such information.

(b) The SNGA may summon any licensee or a licensee's agents, employees, or suppliers to appear to testify with regard to the conduct of any licensee or the agents, employees, or suppliers of any licensee.

- (1) All such testimony shall be given under oath and may embrace any matters that the SNGA may deem relevant to the discharge of its official duties.
- (2) Any person so summoned to appear shall have the right to be represented by counsel.
- (3) Any testimony so taken may be used by the SNGA as evidence in any proceeding or matter before the SNGA.
- (4) Failure to appear and testify fully at the time and place designated, unless excused, shall constitute grounds for –
  - (A) Revocation or suspension of any License held by the person summoned and/or his or her employer, Principal or employee, and/or,
  - (B) In the case of a Gaming Vendor, the loss of the privilege to provide goods and services to the Gaming Operation.
  - (C) Violation of this Section shall be a separate offense and subject to civil sanctions under this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

### **Section 308. Price-Fixing and other Trade Restraints Prohibited**

No Gaming Vendor shall make an agreement — either express or otherwise -- with any other Gaming Vendor to fix the price at which or limit the geographic area for which any device, paraphernalia, machine, equipment, prize or any other item used in connection with any of the activities authorized under this Code shall be sold or leased, or which services in connection therewith shall be rendered. The price of such items in a competitive market place shall be established by each Gaming Vendor for the products and services offered by each and shall not be established, directly or indirectly, in concert with another. Violations of this Section shall be a civil violation of this Title and shall be subject to civil sanctions under this Title. Nothing in this Section shall bar a Gaming Vendor from assigning sales territories among its bona fide representatives.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

**Section 309. Protection of Informant Identity**

The SNGA shall refuse to reveal at any court proceeding, or otherwise, the identity of any informant if such revelation would subject the informant to bodily harm. A refusal by any official or employee of the SNGA to provide information related to informants shall not form the basis for any sanction, disciplinary action or reprisal.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

## **CHAPTER FOUR**

### **Section 401. Responsibilities of SNGE and/or the Gaming Enterprise**

(a) In General. The requirements of this Section shall be in addition to those stated elsewhere in this Title including those stated in Section 203(b)(2).

(b) SNGE or Seminole Nation Gaming Enterprise. SNGE or Seminole Nation Gaming Enterprise shall oversee the management of the Gaming Enterprise in a manner that assures compliance with this Title, regulations and orders issued under this Title, and all applicable provisions of IGRA, NIGC regulation, and the Compact.

(c) Gaming Enterprise Responsibility. The General Manager of the Gaming Enterprise shall supervise and be directly responsible for all activities in a facility licensed under this Title and for:

- (1) The compliance of all such activities with the terms of the facility License and the applicable terms of this Title and regulations issued under this Title;
- (2) The compliance by all employees of the Gaming Operation licensed under this Title with the terms of their Licenses;
- (3) Assuring that the Gaming Enterprise works with Gaming Vendors and Gaming Financers in a manner that assures that they are not engaged in any activities exceeding the scope of their Licenses under this Title as they relate to functions of the Gaming Operation or in contravention of any applicable laws;
- (4) Preparing, securing SNGA approval for, and implementing a security plan for operation of each Gaming facility. Amendments shall be approved by the SNGA prior to implementation; and
- (5) Securing a license from SNGA for each electronic or other game to be placed into operation at a Gaming facility, including providing such Gaming Vendor information to the SNGA as it may require related to the procedures and policies for payout, accumulation, and account restrictions for funds, including for progressive payout games, and the safeguards built into the hardware and software associated with the electronic game.

(d) Minimum Internal Control and Technical Standards. The Gaming Operation shall be responsible for establishing internal control policies and procedures and ensuring that all gaming systems are compliant with all applicable technical standards no less stringent than those established by SNGA by regulation, all applicable regulations of the NIGC, and all applicable provisions of the Compact.

(e) Safety and Welfare. The construction, maintenance, and operation of a Gaming Facility licensed under this Title shall be conducted in a manner that adequately protects the

environment, public health, safety, morals, good order, and general welfare of the public and citizens of the Seminole Nation. All alterations or modifications of a Gaming facility must be approved by the SNGA. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee and willful and persistent use or toleration of unsuitable methods of operation shall constitute grounds for License revocation and/or other sanctions.

(f) Extension of Credit Not Allowed. The extension of credit by the Gaming Operation shall be prohibited and no person shall be permitted to play games authorized under this Title on credit nor shall they be provided a loan of any kind, except that such credit prohibition shall not prohibit the charging of gaming costs on credit cards nationally known and approved by the SNGA.

(g) Firearms. No firearms, air guns which are capable of discharging dangerous projectiles or gases, such as “BB” or CO2 guns, rifles, shotguns, pistols, or revolvers, shall be allowed on the premises, except as permitted by regulation of the SNGA.

(h) Gaming Laws and Regulations on Premises. All components of the Gaming Operation shall obtain, maintain, and keep current a copy of this Title and all regulations of SNGA and any amendments to either. The Gaming Enterprise shall maintain at least one copy on the premises used for the conduct of Gaming under this Title.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]

#### **Section 402. Gaming Requirements**

(a) Restriction on Games Allowed. The Gaming Operation may only use or employ games authorized by IGRA and/or the Compact and approved by the SNGA. Electronic games may only be used when supplied by Gaming Vendors licensed by SNGA meeting the applicable technical standards. The SNGA may assess a fee for such approval and for re-approval when required by a modification to the hardware or software of the game.

(b) Restriction on Location of Games. Games shall be operated only on the appropriate licensed premises in facilities licensed under this Title.

(c) Player Rates. The Gaming Operation may charge players for games at rates approved by the SNGA. The rate shall be fixed for each type and/or group of games and posted conspicuously on the premises.

(d) Prize Awards. Every prize awarded by the Gaming Enterprise may be awarded only to the person(s) actually winning the prize, provided that prizes shall not be awarded to minors or any person subject to an order of exclusion from the gaming premises.

(e) Exclusion of Licensees from Participation in Promotions. No licensee employed by the Gaming Operation or providing Gaming Goods shall be eligible to participate in any promotion of the Gaming Operation or to receive any promotional prize.

(f) Age Limits for Gaming. No person, who is under the age of 18, shall be allowed to participate in any manner in the operation of any game or promotion in which prizes are awarded. No person(s) under the age of eighteen (18) shall be allowed on the gaming floor while games are being played. No person(s) under the age of twelve (12) shall be allowed in any area of the premises unsupervised, including vehicles located in parking lots. It shall be the responsibility of the Gaming Enterprise to enforce the provisions of this section and Security shall notify the appropriate social services agency if unsupervised minors are found in any area of the premises.

(g) Limitations of Play by Licensees. No employee of the Gaming Operation may play any Games while on duty, except in the case of the use of skills to encourage Gaming. Skills may be used only when operating consistent with regulations adopted by SNGA. Licensees may not participate in gaming activities conducted by the Gaming Facility in which they are employed.

(h) Alcoholic Beverages. No beverage containing alcohol, including but not limited to beer, wine, or liquor, shall be offered or awarded as a prize or in lieu of a prize for winning at any time. Licenses shall be required in accordance with applicable laws for the sale of Liquor on premises where gaming is played and the Gaming Operation shall be responsible for ensuring compliance.

(i) Ball Requirements. In the event that the Gaming Operation offers live-draw bingo games, lotto, or other games similar to bingo:

- (1) Each numbered ball or other device used in a game for the selection of numbers to be called in play shall be the same weight and size as each of the other balls or devices used for that purpose of that game and in accordance with such other regulations as may be adopted by the SNGA; and
- (2) Immediately before the calling of each number in a game, the caller shall turn the portion of the ball or other device used to determine which number is called, which shows the number and letter to the participants in the game, so that participants may know that the proper number is being called out.

(j) Pay Tables and Retention Ratios. The SNGA shall approve pay tables and the retention ratio for all gaming systems employed by the Gaming Operation;

(k) Malfunctions. A malfunction of a gaming system and/or gaming hardware shall void all pays and plays.

(l) House Rules. The Gaming Operation may establish house rules subject to the approval of the SNGA.

(m) Availability of Game Rules. A copy of the rules for each game conducted shall be filed with and approved by the SNGA. The rules shall be posted and/ otherwise be made available to all Gaming Facility patrons upon request.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012.]



## **CHAPTER FIVE REVENUES AND AUDITS**

### **Section 501. Audits and Accounts - Responsibility**

(a) The Gaming Operation shall maintain an approved accounting system and properly account for all revenues, expenditures, and financially related business transactions in accordance with SNGA-approved accounting procedures and generally accepted accounting principles.

- (1) The Gaming Operation shall establish, maintain, and employ procedures that safeguard the Gaming Enterprise's assets and revenues, including recording of cash and evidence of debt and mandatory count procedures. Such procedures shall establish a controlled fiscal environment, accounting system, and control procedures that safeguard the assets of the Gaming Enterprise; ensure that operating transactions are properly recorded; promote operational efficiency; and encourage adherence to prescribed policies.
- (2) The Gaming Operation shall employ a uniform code of accounts and accounting classifications to ensure the consistency, comparability, and effective disclosure of financial information to the Nation and to SNGA. Such code shall require that records be retained that reflect statistical drop (amount wagered by Patrons), statistical win to statistical drop, and the percentage of statistical win to statistical drop, and provide similar information for each type of game in each Gaming facility.
- (3) SNGE shall maintain its cash handling procedures and accounts always consistent with the requirements of the regulations of the NIGC and pursuant to the Compact.

(b) SNGA shall review and approve the accounting and cash handling procedures of the Gaming Operation and shall establish by regulation minimum reporting and financial recordkeeping requirements to ensure that all monies or things of value received and/or paid out may be properly monitored and accounted for.

(c) SNGA shall continuously monitor and enforce compliance with cash handling, accounting, and internal control policies and procedures, which shall be consistent with SNGA internal control standards and NIGC's regulations establishing minimum internal control standards. SNGA shall establish internal audit standards in accordance with generally accepted accounting principles and review internal controls of SNGE for their integrity in implementation.

(d) The Gaming Operation shall contract for an annual independent audit of the financial statements of all Gaming activities by an external auditing firm and shall submit the resulting audit reports to the General Council, SNGA, and the NIGC, provided that the cost for such mandatory reviews and audits shall be assessed against the Gaming Operation as a

regulatory expense. The independent accounting firms employed to conduct such financial audits shall be knowledgeable in casino audits and operations and shall be subject to approval by the SNGA. The independent audit report shall meet all requirements for external audits established by NIGC regulations. All contracts for suppliers, services, or concessions for a contract amount in excess of \$25,000 annually and all gaming and gaming-related construction contracts shall be subject to audit by SNGA and/or the person or firm conducting independent audits.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012; amended by TO 2017-06, July 29, 2017; NIGC approved November 9, 2017.]

## **Section 502. Gaming Revenue**

(a) The entity or entities responsible for gaming revenue accounting shall on a daily basis track all gaming revenue data and shall record such data immediately upon its receipt of the daily deposit documentation from each gaming facility. The accounting entity(ies) shall also perform the following calculations each month:

- (1) “Compact Fees” shall be calculated and paid to the State of Oklahoma based on “adjusted gross covered games revenue” as that term is defined in the Compact in effect between the State of Oklahoma and the Seminole Nation of Oklahoma by subtracting from the total amount of all receipts (total amounts wagered) in covered games, all amounts paid out (for prizes). (Total receipts - Total Payments = Adjusted Gross Covered Games Revenue.) The amount to be paid to the State shall be the appropriate percentage of “adjusted gross covered games revenue” as specified in the Compact.
- (2) Until satisfied, the “NIGC Fine Payment” shall be calculated and paid to the NIGC based on “Net Gaming Revenue” which shall be defined as gross gaming revenue (Class II and Class III) less amounts paid out as, or paid for prizes and total operating expenses (excluding management fees, if any). (Gross Revenue - Prizes Paid Out - Total Operating Expense = Net Gaming Revenue.) For purposes of this calculation, the term “Operating Expenses” shall include the following: all gaming employee salaries, wages and benefits; advertising; utilities; supplies; gaming commissions; regulatory fees; and other operating costs plus the costs of SNGA (including costs of operating the surveillance and compliance programs), and that portion of SNGE’s operating costs attributable to its administration and support of the Gaming Enterprise. Depreciation and fees assessed by the Seminole Nation Business and Corporate Regulatory Commission (BCR) shall be excluded from the definition of “Operating Expenses.” The fine payment to NIGC shall be the appropriate percentage of “Net Gaming Revenue” as specified by the NIGC in its agreement(s) with the Nation and in accordance with the terms of this Section. Pursuant to the NIGC Fine Agreement approved by the General Council, the fine payments to NIGC

shall be reviewed further for reduction or abatement at the end of the eighteen (18) months from the signing of the agreement by both parties.

- (3) “Adjusted Net Profit” shall mean “Net Gaming Revenue” as that term is defined in Section 502(a)(2) minus Compact Fees, the NIGC Fine Payment, until it is satisfied (whether paid to NIGC or to the Nation), depreciation, and fees assessed by BCR. (Net Gaming Revenue - (Compact Fee + NIGC Fine + depreciation + Fees assessed by BCR) = Adjusted Net Profit.) Once the NIGC Fine is satisfied, the definition of operating costs as defined in Section 501(a)(2) shall continue to apply for purposes of the monthly calculations of Adjusted Net Profit, and for purposes of calculating the amount of the regulatory fee payable to NIGC on a quarterly basis or on such schedule as the NIGC may specify by rule.

(b) Prior to the monthly distribution of Adjusted Net Profit, the accounting entity(ies) shall transfer the amount calculated for the Compact Fee, the NIGC Fine (until satisfied), and the regulatory fees payable to the SNGA, and the State from the gaming depository account into segregated account(s) and from such account(s), the accounting entity(ies) shall remit such amounts payable to the SNGA, State of Oklahoma, and the NIGC in accordance with the schedules specified in the Compact and by the Agreement with the NIGC, respectively, and, in accordance with subsection (c) of this Section in relation to the SNGA.

(c) The budget for SNGA shall be subject to General Council approval in the budget process and shall be paid from the Seminole Nation Gaming Vendor/Gaming Operator Tribal Fee Code pursuant to Section 5.05 of Title 30 of the Seminole Nation Code of Laws, but which fee shall not be intended to cover SNGA’s costs of surveillance, which shall be paid by the Gaming Operation pursuant to Section 106(d) of this Title. The SNGA shall be responsible for administering its budget, provided that it shall provide the Chief and the General Council an annual accounting of expenditures.

(d) On the 15th of each month, the accounting entity(ies) shall remit to the Treasurer of the Seminole Nation eighty percent (80%) of the Adjusted Net Profit from gaming, which shall constitute the Nation’s share. The Nation’s share shall be applied in accordance with an approved General Council resolution to fund tribal government or programs; to provide for the general welfare of the Nation and its members; to promote tribal economic development; to donate to charitable organizations; and to fund operations of government agencies of the Seminole Nation.

(e) The remaining twenty percent (20%) of the Adjusted Net Revenue shall be retained and used by the Seminole Nation Gaming Enterprise for any purpose authorized by Title 8 of the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 86-2; amended by TO 91-08, August 29, 1991; codified by TO 91-12, November 16, 1991; amended by TO 2001-09, September 29, 2001; amended by TO 2003-20, November 8, 2003; stricken and amended by TO 2004-30, December 4, 2004; amended by TO 2008-03, March 1, 2008 ;

amended by TO 2008-06, April 8, 2008; amended by TO 09-08, June 6, 2009; superseded by TO 2011-11, October 29, 2011; NIGC approved February 9, 2012; amended by TO 2017-06, July 29, 2017; NIGC approved November 9, 2017.]

# TITLE 16 GENERAL COUNCIL INDEX

<b>TITLE 16 GENERAL COUNCIL INDEX.....</b>	<b>1</b>
<b>TITLE 16 GENERAL COUNCIL .....</b>	<b>1</b>
<b>CHAPTER ONE DUTIES RESERVED.....</b>	<b>1</b>
<b>CHAPTER TWO RESPONSIBILITIES RESERVED.....</b>	<b>2</b>
<b>CHAPTER THREE MEETINGS.....</b>	<b>3</b>
Section 301. Regularly Quarterly Meetings.....	3
Section 302. Annual Meeting.....	3
Section 303. Rules of Order.....	3
<b>CHAPTER FOUR GENERAL COUNCIL SECRETARY .....</b>	<b>4</b>
Section 401. General Council Secretary .....	4
Section 402. Duties.....	4
Section 403. Performance of Duties .....	4
Section 404. Job Classification .....	5
Section 405. Sole Law Regarding Job Classification and Salary.....	5
<b>CHAPTER FIVE STIPEND PAYMENTS.....</b>	<b>6</b>
Section 501. Stipend Payments to Members of the General Council.....	6
Section 502. Travel and Per Diem.....	6
<b>CHAPTER SIX CONFIRMATION OF COMMITTEE APPOINTMENT.....</b>	<b>7</b>
Section 601. Committee Member Confirmation Process .....	7
Section 602. Stipend Payments to Members of Official Boards, Commissions, Task Forces and Committees.....	7
Section 603. Board, Commission, Committee and Task Force Bylaws .....	7
<b>CHAPTER SEVEN SEMINOLE NATION ADMINISTRATIVE APPEALS BOARD ...</b>	<b>8</b>
Section 701. Definitions .....	8
Section 702. Seminole Nation Administrative Appeals Board .....	8
Section 703. Board Qualifications; Term .....	8
Section 704. Appeals Board Officers .....	8
Section 705. Hearing Panel.....	8
Section 706. Administrative Record and Casefiles .....	9
Section 707. Manner of Filing Appeal .....	10
Section 708. Scheduling of Hearing .....	10

Section 709.	Notice of Hearing to Appealing Party .....	10
Section 710.	Service of Notices Related to Appeals; Computation of Appeal Time .....	10
Section 711.	Communications with Board Members .....	11
Section 712.	Issuance of Subpoenas .....	11
Section 713.	Conduct of Hearing .....	11
Section 714.	Right to Counsel.....	11
Section 715.	Decision .....	12
<b>CHAPTER EIGHT RULES OF ORDER OF THE GENERAL COUNCIL OF THE SEMINOLE NATION OF OKLAHOMA.....</b>		<b>13</b>
<b>PART I PRESIDING OFFICER, GENERAL COUNCIL MEMBERS, SECRETARY, SERGEANT AT ARMS.....</b>		<b>13</b>
Rule 1.1.	Legislative Body .....	13
Rule 1.2.	The General Council .....	13
Rule 1.3.	The General Council .....	13
Rule 1.4.	Duties of Secretary .....	14
Rule 1.5.	Basic Responsibilities.....	14
Rule 1.6.	Presentations or Debates Regarding Proposed Measures by Chairperson .....	15
Rule 1.7.	Sergeant at Arms .....	15
Rule 1.8.	Chief as Chairperson .....	15
Rule 1.9.	Authority to Execute Documents .....	16
Rule 1.10.	Responsibilities of Assistant Chief.....	16
Rule 1.11.	Appointment .....	16
Rule 1.12.	Authority.....	16
Rule 1.13.	Voting .....	16
<b>PART II MEETINGS; MEETING DECORUM.....</b>		<b>17</b>
Rule 2.1.	Regular Meeting Dates; Time; Stipends.....	17
Rule 2.2.	Annual Meeting .....	17
Rule 2.3.	Special Meeting .....	17
Rule 2.4.	Special Meeting Called by Council Members .....	17
Rule 2.5.	Special Meeting Times; Compensation.....	18
Rule 2.6.	Notice .....	18
Rule 2.6.1	Giving and Serving Notice .....	18
Rule 2.7.	Open Meetings .....	19
Rule 2.8.	Quorum.....	19
Rule 2.9.	Approval of Minutes .....	19

Rule 2.10.	Order of Business.....	19
Rule 2.11.	Priority of Business .....	20
Rule 2.12.	Items Not on Agenda.....	20
Rule 2.13.	Authorization of Non-Council Members to Speak.....	20
Rule 2.14.	Rules of Conduct.....	20
<b>PART III DEFINITIONS, PRESENTATIONS, DEBATES AND VOTING .....</b>		<b>21</b>
Rule 3.1.	Motion .....	21
Rule 3.2.	Resolution.....	21
Rule 3.3.	Law or Ordinance.....	21
Rule 3.4.	Presentation of Proposed Measures.....	22
Rule 3.5.	Form of Council action on Proposed Measure.....	22
Rule 3.6.	Placement of Measure on Floor for Debate .....	22
Rule 3.7.	Restatement of Motion .....	23
Rule 3.8.	Debate Limitations .....	23
Rule 3.9.	Motions Permitted During Debate .....	23
Rule 3.10.	Validity of Enactments .....	25
Rule 3.11.	Roll Call Voting .....	25
Rule 3.12.	Reconsideration.....	26
Rule 3.13.	Documentation of Motions; Maintenance of Records.....	26
<b>CHAPTER NINE SEMINOLE NATION TRIBAL OFFICIAL AND EMPLOYEE ETHICS ORDINANCE ACT .....</b>		<b>27</b>
Section 901.	Citation .....	27
Section 902.	Purpose .....	27
Section 903.	Authority .....	27
Section 904.	Definitions .....	27
Section 905.	Code of Ethical Standards.....	28
Section 906.	Political Activity .....	29
Section 907.	Nepotism.....	29
Section 908.	General Council Representatives .....	29
Section 909.	Review .....	30
Section 910.	Official Correspondence and Communication on behalf of the Nation .....	30

**TITLE 16**  
**GENERAL COUNCIL**

**CHAPTER ONE**  
**DUTIES**

**RESERVED**



**CHAPTER TWO**  
**RESPONSIBILITIES**

**RESERVED**

## **CHAPTER THREE MEETINGS**

### **Section 301. Regularly Quarterly Meetings**

The regular quarterly meetings of the General Council of the Seminole Nation of Oklahoma shall be held on the first Saturday of March, June, September and December. In the event the Saturday designated as a regular quarterly meeting date is a holiday, the regular quarterly meeting shall be held on the Saturday following.

[HISTORY: Enacted by TO 70-4, June 6, 1970; codified by TO 91-12,  
November 16, 1991.]

### **Section 302. Annual Meeting**

The regular quarterly meeting of the General Council in September shall be designated the Annual meeting, at which time the Chief and all committee chairmen and other officials shall make an annual report to the General Council.

[HISTORY: Enacted by TO 70-4, June 6, 1970; codified by TO 91-12,  
November 16, 1991.]

### **Section 303. Rules of Order**

The General Council of the Seminole Nation by approval of a written ordinance shall adopt the Rules of Order which shall be the exclusive official rules of parliamentary procedure for the General Council meetings in all cases to which they are applicable and in which they are not inconsistent with the Constitution or laws of the Seminole Nation of Oklahoma. These Rules of Order may be amended only by General Council ordinance, provided that all proposed Rule amendments must first be referred to an appropriate committee for recommendations prior to presentation for General Council consideration, must be presented in the form of written ordinance, must appear on the meeting agenda and must be provided to Council members at least ten days prior to the meeting at which they are to be considered. In no case shall the General Council consider a verbal resolution or ordinance to amend any rule during the course of a meeting. Approval or amendment of any Rule pursuant to this provision shall not be effective until the General Council meeting following the meeting at which approval or amendment occurred.

[HISTORY: Enacted by TO 94-06, May 7, 1994; amended by TO 2003-16,  
September 17, 2003.]

## **CHAPTER FOUR**

### **GENERAL COUNCIL SECRETARY**

#### **Section 401. General Council Secretary**

The General Council shall appoint for so long as it desires a Secretary from within or without its membership. Any appointee from without the elected membership of the General Council shall not be eligible to participate in any business before that body unless the General Council so desires.

[HISTORY: Enacted by TO 91-07, August 29, 1991; codified by TO 91-12,  
November 16, 1991.]

#### **Section 402. Duties**

The duties of the Secretary of the General Council shall include the following:

- (a) Attend all meetings of the General Council, and record and take notes regarding the proceedings;
- (b) Prepare minutes of General Council meetings;
- (c) Attest to the signature of the Principal Chief on resolutions, ordinances, and other tribal documents requiring such attestation;
- (d) Certify copies of original tribal documents;
- (e) Cause to be maintained files, records and correspondence of the General Council in an orderly manner for the convenience of the General Council;
- (f) Act as official custodian of all official original tribal documents, which shall be maintained at the General Council office at Wewoka Tribal Complex;
- (g) Attend to the giving and serving of all notices of the General Council; and
- (h) Perform all other duties concerning the preparation and maintenance of the Nation's records required by Seminole Nation Code, Title 21, sections 101, et seq.

[HISTORY: Enacted by 91-07, August 29, 1991; codified by TO 91-12,  
November 16, 1991; amended by TO 2001-07, June 2, 2001; amended by TO  
2007-05, June 2, 2007; subsection numbering scheme modified on August 26,  
2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 403. Performance of Duties**

The Secretary of the General Council shall be present at an office set aside for her in the office complex of the Seminole Nation within five days following each General Council meeting, and shall perform all her duties arising from such meeting at her office at the Seminole Nation

complex between the hours of eight a.m. and five p.m., including preparation of minutes, attestation of resolutions, ordinances and other documents, and preparation of certified copies of documents. Such duties shall be completed no later than ten (10) days from the date of such General Council meeting.

[HISTORY: Enacted by TO 91-07, August 29, 1991; amended by TO 91-7A, September 14, 1991; amended and codified by TO 91-12, November 16, 1991.]

#### **Section 404. Job Classification**

The General Council Secretary shall be designated as a permanent full-time employee of the Seminole Nation for accounting purposes, and shall be paid at the rate set by the General Council, based upon her signed and properly approved timesheets, which shall be approved prior to payment by the Principal Chief or the Assistant Chief.

[HISTORY: Enacted by TO 91-07, August 29, 1991; amended by TO 91-7A, September 14, 1991; amended and codified by TO 91-12, November 16, 1991; amended by TO 2003-12, September 6, 2003.]

#### **Section 405. Sole Law Regarding Job Classification and Salary**

This enactment is intended to be the sole law governing job classification and salary of the General Council Secretary, and all other ordinances or resolutions which might be construed as pertaining to such matters shall have no force and effect as to the job classification and salary of the General Council Secretary.

[HISTORY: Enacted by TO 91-07, August 29, 1991; codified by TO 91-12, November 16, 1991.]

## **CHAPTER FIVE STIPEND PAYMENTS**

### **Section 501. Stipend Payments to Members of the General Council**

Members of the General Council shall receive no salary for the performance of their duties, but shall receive meeting stipends, unless the General Council by majority vote decides to waive such payment for any specified General Council meetings. Council Stipends shall be paid as follows: effective immediately, inclusive of the March 7, 2020 Quarterly Council meeting, and through September 30, 2021, General Council members attending regular and specially called Council meetings shall not receive a stipend for attendance at Council meetings; thereafter General Council members attending regular and specially called Council meetings shall receive a one hundred dollar \$100 stipend in lieu of expenses for each such meeting; provided that no payment shall occur if absence is taken before noon; and provided further that those members attending until afternoon recess, but leaving prior to adjournment shall receive only \$50 in lieu of expenses for said meeting.

[HISTORY: Enacted by TO 1-69, October 4, 1969; amended by TO 74-1, March 30, 1974; amended by TO 87-1, February 21, 1987; Amended by TO 90-08, October 20, 1990; amended and codified by TO 91-12, November 16, 1991; amended by TO 99-01, March 6, 1999; amended by TO 08-15, July 22, 2008; amended by TO 2011-06, June 4, 2011; amended by TO 2018-03, March 3, 2018; amended by TO 2020-07, March 7, 2020.]

### **Section 502. Travel and Per Diem**

No travel or per diem payments shall be made to members of the General Council or the General Council Secretary for attendance at General Council meetings within the Seminole Nation. Payments for travel and per diem to members of the General Council and the General Council Secretary authorized to travel to a specific location for a specific purpose shall be in strict accordance with tribal travel policies and procedures contained in the Personnel Policies of the Seminole Nation.

[HISTORY: Enacted by TO 1-69, October 4, 1969; amended by TO 74-1, March 30, 1974; amended by TO 87-1, February 21, 1987; amended by TO 90-08, October 20, 1990; amended and codified by TO 91-12, November 16, 1991.]

## **CHAPTER SIX**

### **CONFIRMATION OF COMMITTEE APPOINTMENT**

#### **Section 601. Committee Member Confirmation Process**

RESERVED.

#### **Section 602. Stipend Payments to Members of Official Boards, Commissions, Task Forces and Committees**

All official Seminole Nation commission, committee, task force or board members who are confirmed to sit on such commissions, committees, task forces or boards by the General Council shall be entitled to mileage reimbursement for travel to attend meetings. Mileage reimbursement shall be derived from funds provided by the General Council budget or Administrative Support budget. This section shall not apply to official commissions, committees, boards or task forces with reimbursement rates otherwise established by separate ordinance established by the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 1-69, October 4, 1969; amended by TO 74-1, March 30, 1974; amended by TO 87-1, February 21, 1987; amended by TO 90-08, October 20, 1990; amended and codified by TO 91-12, November 16, 1991; amended by TO 2007-18, December 1, 2007; amended by TO 2012-14, October 27, 2012; amended by TO 2020-07, March 7, 2020.]

#### **Section 603. Board, Commission, Committee and Task Force Bylaws**

Within the Seminole Nation, all boards, commissions, committees and task forces shall be required to adopt governing bylaws to maintain and establish parliamentary order that are not inconsistent with the Nation's Constitution, Code of Laws and its organic resolution or ordinance. Such bylaws and any future amendments shall be promptly submitted to the Seminole Nation General Council Secretary. Any board, commission, committee or task force without bylaws shall not receive meeting stipends until such time as the duly adopted bylaws are submitted to the Council Secretary. Upon bylaw submission, any stipend payments withheld in accordance with this Section shall be promptly paid.

[HISTORY: Enacted by TO 2010-09, December 4, 2010.]

## **CHAPTER SEVEN**

### **SEMINOLE NATION ADMINISTRATIVE APPEALS BOARD**

#### **Section 701. Definitions**

RESERVED.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 702. Seminole Nation Administrative Appeals Board**

The Seminole Nation Administrative Appeals Board is hereby established to serve in the capacity of a quasi-judicial body to hear appeals regarding decisions of Seminole Nation programs and agencies affecting individuals, provided that the Board shall have authority to hear only those appeals expressly authorized in other Titles of the Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 703. Board Qualifications; Term**

The Administrative Appeals Board shall be composed of one (1) member of the General Council, and four (4) members of the Seminole Nation of Oklahoma, age 21 or older, appointed by the Principal Chief and confirmed by the General Council at a duly called General Council meeting. The initial term of each of these offices shall commence on January 12, 2002 and shall expire on January 13, 2006. Thereafter, each four (4) years the terms of office on the Administrative Appeals Board shall expire, and the Principal Chief, upon confirmation by the General Council, shall appoint such additional member/s as necessary to bring the total membership to five (5) on the Administrative Appeals Board in accordance with this section. No member of the Administrative Appeals Board shall be an employee of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 93-22, November 6, 1993; amended by TO 02-,  
January 12, 2002.]

#### **Section 704. Appeals Board Officers**

The Administrative Appeals Board shall select a Chairman and a Vice-Chairman from its membership. Term of office shall be for one year from October 1 until the following September 30. Any officer elected after October 1 of any given year shall serve the remainder of the one-year term expiring on the following September 1.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 705. Hearing Panel**

Each appeal shall be heard by a panel consisting of three of the five Board members. Selection and assignment of panels to cases shall be conducted pursuant to rules established by the Board.

No Appeals Board member who is related as follows to any of the parties in an appeal shall serve on the panel hearing the appeal: father, mother, step-father, step-mother, sister, brother, half-sister, half-brother, spouse, child, aunt, uncle, nephew, niece, brother-in-law, sister-in-law, grandparent, legal guardian or first cousin. Each member of the three-member panel assigned to a case must be present during the hearing, must have access to all hearing materials and shall have a vote in making the Board's decision.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 706. Administrative Record and Casefiles**

(a) Program Summary Statement. The person in charge of the program or agency involved in the appeal shall prepare a Program Summary Statement for placement in the Administrative Record on a form containing the following information: Case number; name of appealing party; type of program benefits involved in the appeal; date decision made; date appeal received by the program; date appealing party notified of hearing before the board; statement that appealing party filed appeal within time required or that appellant did not file his appeal within the time required; and list of Seminole Nation laws that apply to the appeal.

(b) Administrative Record. The Administrative Record shall be prepared by the person in charge of the program that is the subject of the appeal, and shall contain the following documents: Program Summary Statement; appealing party's application form; decision letter which is the subject of appeal; the appealing party's written appeal; notice of the Board hearing, with certified mail receipt; any documents submitted to the program by the appealing party; and any other relevant documents allowed into the record by the Board.

(c) Establishment of Casefile. The Appeals Board shall maintain an Administrative Appeals Board Casefile for each appeal filed, which shall contain the Administrative Record, other documents accepted by the Appeals Board, and decision of the Appeals Board. The person in charge of the program that is the subject of the appeal shall initially prepare the Casefile, by placing the Administrative Record in a file and delivering it to the Executive Office for storage in a locked file cabinet. The Chairman of the Appeals Board will assign each Casefile a number beginning with the words "Ad. Appeal No." followed by the last two digits of the year in which the appeal was filed, followed by a dash, followed by an individual number for each appeal.

(d) Use of Appeals Board Casefile at Hearing; Consideration of Additional Evidence. The Administrative Appeals Board Casefile will be the official record of the case. In addition to the Appeals Board Casefile, the Board may consider any other evidence which it deems relevant to the hearing, including sworn testimony of witnesses. The Chairman will administer an oath to each witness, including Judgment Fund Office staff and the appellant, before each witness testifies. The witness will be asked to state: "I swear that I will tell the truth, and state that I understand that any statement of a falsehood would be perjury subject to criminal prosecution."

(e) Access to Casefiles. The Board members will share the Casefile during the hearing. Appeals Board members shall not keep the appeal Casefile or any other records or documents related to an appeal in their possession following the hearing. Public inspection of the Program Summary Statement and the Appeals Board decision shall be allowed. Other



materials contained in the Casefile may be released for public inspection only if authorized by the Board Chairman pursuant to rules established by the Board.

[HISTORY: Enacted by TO 93-22, November 6, 1993; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 707. Manner of Filing Appeal**

The manner in which an appeal notice must be filed with the Administrative Appeals Board shall be as stated in the applicable law of the Seminole Nation establishing appeal rights with regard to a program or agency decision.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

**Section 708. Scheduling of Hearing**

The Board Chairman shall promptly notify a designated Seminole Nation Executive Office employee of the scheduling of a hearing, which shall be no later than sixty (60) days from date of the Chairman's receipt of the appeal notice, provided that for good cause the Board may grant either party an extension of time for the hearing date. The Executive Office employee shall verbally notify the person in charge of the program that is the subject of the appeal as to the hearing date, time and location.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

**Section 709. Notice of Hearing to Appealing Party**

The director of the program that is the subject of the appeal shall send a notice of the Administrative Appeals Board hearing to the appealing party by certified mail, return receipt requested. The notice must be received by the appealing party at least five days before the hearing, unless the appealing party states that he waives any objection he might have to receiving the notice. The person in charge of the program that is the subject of the appeal shall send the appealing party a copy of the Administrative Appeals Board Casefile with the notice.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

**Section 710. Service of Notices Related to Appeals; Computation of Appeal Time**

All notices related to appeal rights of persons affected by Seminole Nation program or agency decisions and having recourse to the Administrative Appeals Board shall be mailed to the address of record or the last available address by certified mail, return receipt requested. If the certified letter is returned undelivered, then a second notice shall be sent by regular mail. Service of notices will be considered to have been made on:

(a) The date of delivery indicated on the return receipt when the notice has been sent by certified mail, return receipt requested; or

(b) The date the second notice sent by regular mail is returned by the post office as undelivered, or ten (10) days after the date the second notice is sent by regular mail, when the letter has not been returned by the post office, whichever occurs first.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 711. Communications with Board Members**

The Administrative Appeals Board shall not discuss any pending appeal with any person before the appeal hearing, including the person responsible for the program decision that is the subject of the appeal or the appealing party. The parties shall have their opportunity to discuss the case with the Board at the appeal hearing.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 712. Issuance of Subpoenas**

RESERVED.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 713. Conduct of Hearing**

The Chairman or Vice-Chairman of the Administrative Appeals Board shall preside during the course of the hearing. The Chairman shall conduct the hearing pursuant to rules established by the Board. The hearing will be an audio-taped public hearing. The public, the person in charge of the program or agency that is the subject of the appeal and the person appealing have the right to be present during the hearing at all times, except when the Board retires to make its decision. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party requesting said record. The Board will not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Board. The hearing may be adjourned, postponed and continued if requested by either party, at the discretion of the Administrative Appeals Board.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

#### **Section 714. Right to Counsel**

The person appealing may be represented by counsel at his own expense. The person in charge of the program or agency that is the subject of the appeal may be represented by the Attorney General if the case involves complicated legal issues of serious importance to the Seminole Nation and if authorized by the Principal Chief.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

**Section 715. Decision**

The Administrative Appeals Board must issue a written decision in a timely manner following each appeal hearing. The Administrative Appeals Board may reconvene the hearing to verbally announce its decision after a recess taken in order to reach a decision, or it may reserve announcement of its decision until finalization of its written decision. The decision of the Administrative Appeals Board shall be final and shall not be subject to further review by any other state, tribal or federal government body or court.

[HISTORY: Enacted by TO 93-22, November 6, 1993.]

## **CHAPTER EIGHT**

### **RULES OF ORDER OF THE GENERAL COUNCIL OF THE SEMINOLE NATION OF OKLAHOMA**

#### **ADOPTION AND APPLICABILITY OF RULES OF ORDER**

The following Rules of Order were adopted on May 7, 1994 by Seminole Nation Resolution No. 94-40, and again by Ordinance No. 2003-14, on September 27, 2003, pursuant to the authorization of the Seminole Nation Constitution, Article VII, Order of Business, Section 2 and 16 S.N.C. Section 303. These rules shall govern the General Council in all cases to which they are applicable and in which they are not inconsistent with the Constitution or laws of the Seminole Nation of Oklahoma. These rules may be amended only by procedures set forth in 16 S.N.C. Section 303.

#### **PART I**

#### **PRESIDING OFFICER, GENERAL COUNCIL MEMBERS, SECRETARY, SERGEANT AT ARMS**

##### **Rule 1.1.     Legislative Body**

The legislative body of the Seminole Nation shall be known as the General Council and shall consist of two band representatives elected from each of the fourteen Seminole bands. (Constitution, Article IV). As a matter of convenience and simplicity, the pronouns “he” and “his” shall be used herein to refer to any member of the legislative body or any other person regardless of gender, and shall not be interpreted as a presumption that members of the Council or other tribal officials are male.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO  
2003-14, September 27, 2003.]

##### **Rule 1.2.     The General Council**

The General Council, subject to any restriction contained in the Constitution and laws of the United States, shall have the power to speak or act on behalf of the Nation in all matters in which the Nation is empowered to act (Constitution, Article V), including the right to make voting decisions on all matters before the Council.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO  
2003-14, September 27, 2003.]

##### **Rule 1.3.     The General Council**

The General Council shall appoint, for as long as it desires, a secretary from within or without its membership. (Constitution Article IV, Section 2; 16 S.N.C. Section 401). In the absence of the Secretary of the General Council, the General Council will appoint a Temporary Secretary. (Constitution, Article III, Section 6). Appointment of a Council member as Secretary shall be avoided whenever possible to enable all members’ full and active participation at Council

meetings; provided that any Council member serving as Secretary or Temporary Secretary shall retain the right to vote. Preference for the secretarial position shall be given to a person with computer skills who is a tribal employee or who otherwise demonstrates the ability to complete secretarial duties in a timely manner.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

#### **Rule 1.4. Duties of Secretary**

Requirements for the performance of duties of the Secretary of the General Council shall include those set forth in 16 S.N.C. Sections 402 and 403. Any appointee from without the elected membership of the General Council shall not be eligible to participate in any business before that body unless the General Council so desires. (Constitution, Article IV, Section 2; 16 S.N.C. Section 401).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

Presiding Officer (Chairperson); Sergeant at Arms

#### **Rule 1.5. Basic Responsibilities**

The presiding officer shall be referred to as the Chairperson. He shall refer to himself as the Chair, not using terms such as “I” or “me”. He shall be responsible for conduct of General Council meetings as follows:

- (a) Call the meeting to order;
- (b) Preside over the meeting;
- (c) Rise to put a question to a vote;
- (d) Preserve order and decorum; and
- (e) Issue final decisions regarding interpretation, implementation and enforcement of the General Councils Rules of Order without debate or delay in a fair and impartial manner and take appropriate enforcement action, as follows.
  - (1) In the case of disorderly conduct, the Chairperson may direct the Sergeant at Arms to restore order.
  - (2) If any member does not follow the rules, he may be called, out of order by the Chairperson, in which case he shall stop speaking until he receives instructions from the Chairperson regarding the point of order. A Council member may also seek enforcement by stating: Mr. Chairperson I rise to a Point of Order. The person who was speaking when the member interrupted should then cease speaking, and the Chair will ask the other

member to state his point of order. The Chairperson must then make a decision. The Chairperson may overrule the objection and ask the speaker to continue, or the Chairperson may find the objection in order and take appropriate enforcement action, which may include instructing the speaker to conform to the rules or to be seated.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 1.6.      Presentations or Debates Regarding Proposed Measures by Chairperson**

The Chairman may make introductory comments and respond to factual questions without vacating the Chair. If the person serving as Chairman desires to make a presentation in favor of or against a proposed measure, he shall absent himself from the Chair. If the Principal Chief has absented himself from the Chair to make a presentation, he shall declare that he is regaining control as the Chair for purposes of voting to break a tie. (See Constitution, Article III, Section 5).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 1.7.      Sergeant at Arms**

An on-duty Seminole security officer shall serve as the Sergeant at Arms and shall be compensated as a tribal employee. The Sergeant at Arms shall maintain order pursuant to direction of the Chairperson. The Sergeant at Arms shall strictly enforce rules relating to privileges of the floor and attendance. He shall allow no unauthorized person to enter or remain on the floor.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Authority of Principal Chief and Assistant Chief as Chairperson**

**Rule 1.8.      Chief as Chairperson**

The Chief shall preside over all meetings of the General Council and exercise any authority delegated to him by the Constitution. (Constitution, Article III, Section 5). He may vote only to break a tie. (Constitution, Article III, Section 5). The Chief shall have general supervision over the affairs of the General Council and he shall perform all duties appertaining to the office of chairman. (Constitution, Article III, Section 5).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

### **Rule 1.9. Authority to Execute Documents**

The Chief shall have the authority to sign all resolutions and ordinances enacted by the General Council and to sign all other official papers on behalf of the Nation when so directed by the General Council. (Constitution, Article III, Section 5). The Chief shall retain the authority to sign all official documents arising from Council actions which occurred while the Assistant Chief acted as Chairperson.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

### **Rule 1.10. Responsibilities of Assistant Chief**

The Assistant Chief shall assist the Chief when called on to do so, and in the absence of the Chief from the Chair shall preside, and when presiding shall have all privileges, duties and responsibilities delegated to the Chief as set forth in Rules 1.5 and 1.8 herein. (Constitution, Article III, Section 6).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994 and again by Ordinance No. 2003-14, September 27, 2003.]

### **Authority of Temporary Chairperson**

### **Rule 1.11. Appointment**

If the Chief or Assistant Chief refuses or is unable to call or chair a regular or special meeting, the Council may appoint a Temporary Chairperson from within the General Council or from the voting membership of the Seminole Nation to preside over the Council meeting so the Council shall be able to conduct official business. (Constitution, Article XI, Section 3).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

### **Rule 1.12. Authority**

The Temporary Chairperson shall preside for that one meeting only and shall sign all official papers arising from that one meeting only when so directed by the Council. (Constitution, Article XI, Section 3).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

### **Rule 1.13. Voting**

If the Temporary Chairperson is not a member of the Council, he shall not be allowed to vote to break a tie or to vote on any other official business. (Constitution, Article XI, Section 3). If the Temporary Chairperson is a member of the General Council, he may vote to break a tie.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

## **PART II**

### **MEETINGS; MEETING DECORUM**

#### **Rule 2.1. Regular Meeting Dates; Time; Stipends**

The regular quarterly meetings of the General Council of the Seminole Nation of Oklahoma shall be held on the first Saturday of March, June, September, and December. In the event the Saturday designated as a regular quarterly meeting date is a holiday, the regular quarterly meeting shall be held on the Saturday following. (Constitution, Article VI; 16 S.N.C. Section 301). Regular meetings shall convene at 10:00 a.m. (Article VI, Section 1). Roll call shall be promptly taken at 10:00 a.m. If no quorum is present, roll call shall be taken a second time when it appears that a sufficient number of General Council members are present to make a quorum. If no quorum is present by 10:30 a.m., the meeting date will be rescheduled. A regular meeting will be adjourned no later than 5:00 p.m. unless the Council by consensus extends the meeting time. Stipend payments shall be as set forth in 16 S.N.C. Section 501.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

#### **Rule 2.2. Annual Meeting**

The regular quarterly meeting of the General Council in September shall be designated the annual meeting, at which time the Chief and all committee chairmen and other officials shall make an annual report to the General Council. (16 S.N.C Section 302).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

#### **Rule 2.3. Special Meeting**

The Chief may call a special meeting of the General Council at any time he thinks it necessary. (Article VI, Section 1).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

#### **Rule 2.4. Special Meeting Called by Council Members**

The Chief shall be required to call a special meeting within ten (10) days upon receipt of a request in the form of a petition signed by at least fifteen (15) members of the General Council; provided that no special meeting shall be called except on matters of serious concern to the General Council. (Article VI, Section 1). This rule shall not be interpreted to require General Council consideration at special or regular meetings of individual complaints which have not



first been brought to the Principal Chief for a solution, and shall not be interpreted to require General Council consideration at special or regular meetings of personnel appeals, membership appeals, judgment fund benefit appeals, or any other type of individual appeal which, by express provisions of the Seminole Nation Code, is subject to final decision by the Personnel Board, by the Administrative Appeals Board, by a Court having jurisdiction on the matter or by any other governmental entity.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

#### **Rule 2.5. Special Meeting Times: Compensation**

The meeting time for special meetings held on Saturday shall be the same as regular meeting. A special evening meeting shall be called to order at 7:00 p.m. and end no later than 10:00 p.m. absent suspension of rule.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

#### **Rule 2.6. Notice**

The General Council Secretary shall attend to the giving and serving of all notices of the General Council. (Constitution, Article VIII). Notice of regular and special meetings shall be given at least (10) days in advance to all members of the General Council and shall contain the time, place, and purpose. Notice shall be published in at least one (1) prominent newspaper within Seminole County and notices posted at the Seminole Nation Complex and the BIA Agency Office South of Wewoka, and at the Council House South of Seminole. In case of an emergency, the (10) day notice period may be waived, provided that: reasonable efforts to contact every Council member were made, notice was posted and published at least twenty-four hours before the meeting, and at the meeting the General Council approves waiver of the notice by duly enacted resolution. (Constitution, Article VI, Section 1).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

##### **Rule 2.6.1. Giving and Serving Notice**

Giving and serving any notice required by Rule 2.6 may be completed by electronic means, as provided for by the Seminole Nation of Oklahoma Information Technology Department, or its successor, in which event service is complete upon transmission, or may be completed by personal delivery, in which event service is completed upon receipt. A General Council member may opt-out of the giving and serving of notice through electronic means and receive service by U.S. Postal mailing address of the General Council member, in this event, service is complete upon deposit in the U.S. Postal Mail.

[HISTORY: Adopted by TO 2013-15, October 26, 2013.]

**Rule 2.7. Open Meetings**

All meetings shall be open to the members of the Seminole Nation. (Constitution, Article VI, Section 2). This requirement shall not be interpreted as preventing the General Council from going into closed session for the purpose of receiving legal advice or for the purpose of any deliberations in the exercise of any quasi-judicial function by the Council, provided that any resulting Council decision shall be made in the form of a public vote.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 2.8. Quorum**

No official business may be transacted by the Council at any time in the absence of a quorum, which shall consist of fifteen (15) Council members and either the Chief or Assistant Chief or Temporary Chairperson. (Constitution, Article VI, Section 2).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 2.9. Approval of Minutes**

In the interests of time, the Chairman shall request a waiver of the reading of the minutes. If there are no objections, and absent any objections, the minutes shall stand approved, including any amendments made on the Council floor. If there are any objections to such waiver, the reading of the minutes may still be waived and the minutes approved by motion.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 2.10. Order of Business**

The order of business at any regular or special meeting of the General Council shall be as follows, provided that the order of business may be changed at any meeting by the General Council (Article VII, Section 1) by consensus (without formal vote) upon request by the Chairperson, or by vote if any member of the Council stands and states an objection to the change:

- (a) Call to Order
- (b) Roll call and prayer
- (c) Reading of minutes of last meeting
- (d) Unfinished Business
- (e) Reports of committees
- (f) New Business

- (g) Prayer and Adjournment.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 2.11. Priority of Business**

The sequence of items on the meeting agenda may be changed without formal motion, by General Council consensus, when requested by the Chairperson or a Council member.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 2.12. Items Not on Agenda**

Upon request by the Principal Chief or a General Council member, the General Council may, by consensus (without formal vote) or by vote if any member of the Council stands and states an objection to the change, allow an item which is not on the agenda but which is of serious concern to the Seminole Nation to be addressed and decided under the agenda item “other business,” which shall be the last item under the agenda heading “new business.” A matter which is not subject to call of a special meeting pursuant to Rule 2.4 shall not be addressed pursuant to this rule.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 2.13. Authorization of Non-Council Members to Speak**

Upon request by a General Council member, a member of his band may be authorized by General Council consensus to speak about the subject of an agenda item during debate of the item. Upon request by a General Council member, a member of his band may be authorized by General Council consensus (without formal vote), or by vote if any member of the Council stands and states an objection, to speak on a topic which is not on the agenda, provided that the request will not be honored until all pressing business on the agenda is completed.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 2.14. Rules of Conduct**

General Council meetings shall be conducted pursuant to the following rules of conduct:

- (a) When any member desires to speak he may rise and address the Chairperson, “Mr. or Ms. Chairperson.” Members may address each other as “Mr.” or “Ms.” At all times members should seek to avoid personality.

- (b) When two or more members rise at once, the Chairperson decides who will speak first. The person who is not selected shall be seated.
- (c) No member shall address matters not directly related to the proposed measure.
- (d) No Council member shall make a remark or statement on the floor without authorization of the Chairperson, with the exception of a Motion to Recess to Another Date, a Motion to Adjourn, and Questions of Privilege.
- (e) No Council member shall make remarks out loud during Council session off the floor.
- (f) Verbal outbursts, applause or other disorderly conduct by any person inside the Council house during Council session shall not be permitted.
- (g) Council members and officers are expected to treat others present at the Council meeting with courtesy and respect.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003; amended by TO 2013-14, July 27, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **PART III**

#### **DEFINITIONS, PRESENTATIONS, DEBATES AND VOTING**

##### **Rule 3.1. Motion**

A "motion" is a verbal statement by a member of the General Council by which such member submits a proposed measure for consideration and action by the General Council. (21 S.N.C. Section 101).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

##### **Rule 3.2. Resolution**

A "resolution" is the formal expression of the opinion or will of the General Council relating to some specific matter or thing, adopted by vote, following a duly seconded motion to approve such resolution. (21 S.N.C. Section 101).

##### **Rule 3.3. Law or Ordinance**

A "law" or "ordinance" is the written law of the Seminole Nation intended to permanently direct and control matters applying to persons or things in general, adopted by vote of the General Council following a duly seconded motion to approve such ordinance. The term "ordinance" may be used interchangeably with the word "law" or "statute". (21 S.N.C. Section 101).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 3.4.      Presentation of Proposed Measures**

Proposed ordinances and resolutions may be initially presented and explained to the General Council by a Council member, tribal employee or third party at any regular or special meeting. (21 S.N.C. Section 101). All ordinances presented to the General Council of the Seminole Nation of Oklahoma shall be in writing, provided that the General Council may pass a verbal ordinance if the Council adopts a motion that an emergency exists, requiring adoption of a verbal ordinance. (See 21 S.N.C. Section 103). During the presentation the presenter may take questions from the Council floor. When the presenter recognizes a Council member who wishes to ask a question, the member's question should be directly related to the measure in question. The questioner shall not make statements about the measure or attempt to debate the measure.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 3.5.      Form of Council action on Proposed Measure**

Council action on a proposed measure shall occur as follows:

- (a) Following presentation of a proposed measure, the Chairperson shall entertain Council action on the measure by stating; "I will now entertain a motion regarding this measure."
- (b) The Council may take affirmative action on the measure by one of the following main motions:
  - (1) Motion to Approve the measure, provided that an Objection to Consideration of the Question may be raised following such Motion to Approve the Measure, but only before debate starts.
  - (2) Motion to Postpone the proposed measure.
- (c) If no one moves to approve or postpone the measure, the Chairperson shall announce that it has died for lack of action and the Council will proceed to the next agenda item and the measure may be brought back to the Council as old business at the next Council meeting.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 3.6.      Placement of Measure on Floor for Debate**

Ordinances and resolutions shall be placed on the floor only after presentation pursuant to Rule 3.4 and only after a proper motion has been made and seconded. (21 S.N.C. Section 101).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 3.7.     Restatement of Motion**

When a motion has been made, the Chairperson shall restate it or cause it to be read aloud.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 3.8.     Debate Limitations**

There shall be time limit, presentation and debate of a measure as follows:

- (a) The person or persons presenting new business shall limit the total presentation time to fifteen minutes, including time for questions from the floor, unless authorized to exceed the time limit by consensus or majority vote of the Council.
- (b) The person presenting old business shall limit the presentation to five minutes, unless authorized to exceed the time limit by consensus or majority vote of the Council.
- (c) Each Council member shall be limited to two minutes to debate a proposed measure and shall attempt to limit debate to one presentation whenever possible. A Council member may yield some or all of his debate time to any other Council member.
- (d) Amendments to the original motion may be made in the course of debate pursuant to the provisions of Rule 3.9(h) herein. Each Council member shall be limited to one minute to debate a proposed amendment to a proposed measure.
- (e) At any time during debate a Council member having the floor, or the Chief, may request the Seminole Nation's attorney to provide a legal interpretation or explanation regarding the proposed measure to the Council.
- (f) At the close of debate the Chairperson shall provide the person who presented the measure with two minutes to make concluding remarks and then put the question to a vote. The Chairperson shall stand and state that the measure is being put to a vote and that all-Council member present should return to their seats.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Rule 3.9.     Motions Permitted During Debate**

When a question is under debate, only the following motions may be received, each having precedence in the order stated below:

Motion to Recess to Another Date (which is debatable)<sup>1</sup>

Motion to Adjourn (which is undebatable)<sup>2</sup>

Questions of Privilege<sup>3</sup>

Withdrawal of a Motion (which is undebatable)<sup>4</sup>

Motion to Suspend the Rules (which is undebatable)<sup>5</sup>

Motion to Table (which is undebatable)<sup>6</sup>

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<sup>1</sup> A “Motion to Recess to Another Date” will allow the meeting to be recessed and continued on a later specified date without payment of any additional compensation to Council members. A “Motion to Recess to Another Date” takes precedence over all other motions. It is not debatable if made when another measure is before the Council. It is debatable if presented when no other measure is before the Council. The correct form for stating the motion is “I move that when the Council adjourns this meeting, adjournment be in the form of a recess to meet on (date) at (time).”

<sup>2</sup> A “Motion to Adjourn” takes precedence over all other motions except a motion to fix the time which to adjourn. It cannot be made while someone else has the floor or while a vote is being taken. A Motion to Adjourn cannot be debated or amended.

<sup>3</sup> A “Question of Privilege” is a motion pertaining to the rights and privileges of the Council or its members, such as disorder by spectators, physical conditions causing discomfort or endangerment of health. The proper way to state the motion is: “I move to a Question of Privilege.” If a question of privilege requires immediate action, it can interrupt a member's speech. The presiding officer may make an immediate decision on the motion without a vote if he determines it is a question of privilege, unless the motion is tabled by the Council prior to his decision. Once the presiding officer has disposed of the question of privilege the Council may return to considering the original question that was interrupted.

<sup>4</sup> A “Withdrawal of a Motion” may be made when a question is before an assembly and the person who made the motion withdraws or modifies it or substitutes another motion (which may be the informal request of another Council member or on his own) before a decision or amendment is made. When a motion is withdrawn, withdrawal of the second is unnecessary, and the effect is the same as if it had never been made.

<sup>5</sup> A “Motion to Suspend the Rules” applies only to the rules of order. Rules of order must not be suspended except for a definite purpose, and then a two-thirds vote is required. Rules in the Seminole Nation Constitution cannot be suspended even by unanimous consent, unless they provide for their suspension (such as the provision in Article VII, Section 1 allowing the Council to change the order of business set forth therein).

<sup>6</sup> The object of a “Motion to Table” is to postpone a subject so that it can be taken up later at the same or in a future meeting. The Motion to table should state whether the issue is referred to the Council, to the Executive Department or other Seminole Nation officers or staff persons or to a committee, or commission, or board for further study or information, and whether it should be

Call for the Question (which is undebatable)<sup>7</sup>

Motion to Amend (which is debatable).<sup>8</sup>

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

### **Rule 3.10. Validity of Enactments**

Unless provided otherwise by the Constitution, all enactments based upon a majority vote of those Council members present in their seat on the Council floor at the time the vote is taken and voting at a meeting at which a quorum of fifteen members and the Principal Chief, Assistant Chief or Temporary Chairperson is present shall be deemed valid. (Constitution, Article IV, Section 5; 21 S.N.C. § 101).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

### **Rule 3.11. Roll Call Voting**

Voting on motions to approve and voting on motions to table or amend proposed ordinances or resolutions shall be by roll call vote. Each successive roll call vote thereafter shall commence with vote by the Council members of the band seated to the left of the band, which commenced the last roll call vote. The Council member whose name is called shall answer as follows. “Yes,” “No,” or “Abstain.” No statement shall be made by a Council member during the vote. Any Council member who is not in his seat when the vote is taken shall be counted as absent for the vote.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

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placed on the next meeting agenda or postponed indefinitely. The motion may include the establishment of a special Council committee to study the measure.

<sup>7</sup> A “Call for the Question” is a motion that will terminate all debate and bring the membership to a direct vote on that immediate question, provided that a quorum is present and that a two-thirds majority of the membership votes to put the question to a vote without further debate.

<sup>8</sup> A “Motion to Amend” another motion takes precedence, only over the motion to be amended. The Motion to Amend can itself be amended, although such amendment of an amendment can't be altered further. Amendment may take any of the following forms:

- (1) To “add” or “insert” certain words or paragraphs
- (2) To “strike out” certain words or paragraphs
- (3) To “strike out” certain words and insert others
- (4) To substitute another resolution or paragraph on the same subject for the one that is pending.
- (5) To “divide the question” into two or more motions, as the mover specified, to be a separate vote on some point.



**Rule 3.12. Reconsideration**

After a motion has been made, carried or lost, any member who cast a vote with the majority may move for reconsideration of the question on the same day and such a motion shall take precedence over all other questions except a motion to adjourn. The original vote may be overturned only by two-thirds majority vote of the Council members present when the vote is taken.

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

**Rule 3.13. Documentation of Motions; Maintenance of Records**

Every proper motion shall be reduced to writing by the Attorney General and General Council Secretary and shall be noted on the minutes with the name of the person making it unless withdrawn that same day. All verbal ordinances and resolutions passed shall be documented pursuant to the requirements of (21 S.N.C. Sec. 101), original signed minutes, original signed ordinances, and original signed resolutions shall be maintained pursuant to (21 S.N.C. Sec. 106). Copies of documents shall be certified pursuant to (21 S.N.C. Sect. 107).

[HISTORY: Adopted by Resolution No. 94-40, May 7, 1994; re-adopted by TO 2003-14, September 27, 2003.]

## **CHAPTER NINE**

### **SEMINOLE NATION TRIBAL OFFICIAL AND EMPLOYEE ETHICS ORDINANCE ACT**

#### **Section 901. Citation**

This Act shall be cited as the Seminole Tribal Official and Employee Ethics Ordinance Act of 2004.

[HISTORY: Enacted by TO 2004-16, March 6, 2004.]

#### **Section 902. Purpose**

(a) The purpose of this Act is to provide a standard of fairness and integrity for all officials, administrators, directors, committee members, commissioners, independent contractors, and employees (used cumulatively for the purposes of this Act as, “officials and employees”) of the Seminole Nation while conducting the business of the Nation in their respective capacities.

(b) It shall be recognized that officials and employees are in positions of trust on behalf of the Nation and must endeavor to exercise the highest qualities of conduct, integrity and confidence on behalf of the Nation and its citizenry. Also, it is the responsibility of each employee and official to conduct themselves in a polite and courteous manner with respect and consideration for others.

(c) The standards established herein are not to be considered in lieu of ethical standards imposed by Federal Law, Tribal Law, or Personnel Policies and Procedures of the Nation.

[HISTORY: Enacted by TO 2004-16, March 6, 2004; subsection numbering  
scheme modified on August 26, 2016 pursuant to authority granted by SNC Title  
21, § 203.]

#### **Section 903. Authority**

Section V of The Constitution of the Seminole Nation of Oklahoma, as ratified by the BIA, 1969, empowers the Seminole General Council to promulgate and enforce ordinances and codes on behalf of the Nation.

[HISTORY: Enacted by TO 2004-16, March 6, 2004.]

#### **Section 904. Definitions**

(a) “Official” means any person serving the Nation by constitutional appointment or certified election, which are the Principal Chief, Vice Chief, and General Council Representatives.

(b) “Employee” means any person engaged for his or her services to the Nation or any tribal agency or authority part or full-time and who receives compensation from the Nation for his or her services.

(c) “Administrators,” “Directors,” “Committee Members,” “Commissioners,” and “Independent Contractors” are those persons who neither fall into the employee or official definition and are hired, appointed or confirmed by the General Council or by General Council delegation.

(d) “Conflict of Interest” means matters and issues for which a person may have an unfair advantage by virtue of his or her position and would receive more than significant value in money or items of worth by participating in the decisions of such matters and issues.

(e) “Significant Value” means things or money which would amount to salary, benefits or more than reasonable costs or expenses incurred for conducting business.

(f) “Coerce” means undue influence or intimidation using official capacity as leverage for or against another person.

[HISTORY: Enacted by TO 2004-16, March 6, 2004; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 905. Code of Ethical Standards**

Every official and employee of the Seminole Nation of Oklahoma should endeavor to:

(a) Put their loyalty to the highest moral principles and to the Seminole Nation above loyalty to other persons, parties or governmental entities;

(b) Uphold the laws and regulations of the Seminole Nation and never be a party to their evasion;

(c) Give a full day’s labor for a full day’s pay, giving earnest effort and best thoughts to performance of duties;

(d) Seek to find and employ more efficient and economical ways of getting tasks accomplished;

(e) Never dispense special favors or privileges to anyone, whether for remuneration or not and never sell influence to gain special favors for any person, business or governmental entity.

(f) Never accept, for him or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of tribal duties;

(g) Make no private promises of any kind, binding upon the duties of office, since a tribal official or employee has no private word which can be binding on public duty;

(h) Engage in no business with the Nation, either directly or indirectly, which is inconsistent with the conscientious performance of tribal duties, and further make every effort in his or her private work to avoid conflicts of interest, unless participation in the conduct of the business, personal and Tribal is deemed to be of no substantial effect on his or her integrity and any other interests are deemed insignificant;

(i) Never use any information gained confidentially in the performance of tribal duties as a means of making private profits to the detriment of the Seminole Nation;

(j) Never use his or her position in any way to coerce or give the appearance of coercing anyone to provide a financial benefit to himself or herself or another person; and

(k) Expose corruption wherever discovered.

[HISTORY: Enacted by TO 2004-16, March 6, 2004; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 906. Political Activity**

Political activity of any kind shall be prohibited during working hours, on tribal property, except as those allowed by the election code.

[HISTORY: Enacted by TO 2004-16, March 6, 2004.]

#### **Section 907. Nepotism**

For the purposes of this Act, the term “family” is defined as any individual who is related in the following ways: husband, wife, mother, father, daughter, son brother, sister, grandparent, in-law relationship, aunt, uncle, niece, nephew, cousin to the second degree, or a said relation by legal or tribal adoption.

[HISTORY: Enacted by TO 2004-16, March 6, 2004.]

#### **Section 908. General Council Representatives**

It shall be the policy of the Seminole Nation of Oklahoma to discourage the appointment or election of employees to the position of General Council Representative. Employees of the Seminole Nation and all of its entities are prohibited from serving as a General Council Representative. Any employee who becomes elected or appointed as a General Council Representative must resign employment with the Seminole Nation no later than the last business day prior to being sworn in as a General Council representative or must withdraw himself or herself from elected office to retain employment. It is deemed a conflict of interest. It is the proprietary interest in employment and potential undue influence that may be exerted either at the band or General Council level that constitutes a bias and conflict of interest.

[HISTORY: Enacted by TO 2004-16, March 6, 2004; amended by TO 2013-14, July 27, 2013.]

**Section 909. Review**

The Seminole Nation may be entitled to administrative costs and attorney fees should it be determined that action by an official or employee was frivolous, unreasonable, without foundation, or brought in bad faith in violation of this Act.

[HISTORY: Enacted by TO 2004-16, March 6, 2004.]

**Section 910. Official Correspondence and Communication on behalf of the Nation**

(a) Findings:

- (1) In accordance with the Seminole Nation Constitution, Article V, the General Council of the Seminole Nation of Oklahoma, shall have the power to speak or act on behalf of the Nation in all matters in which the Nation is empowered to act. In accordance with Article III, the executive authority of the Seminole Nation of Oklahoma shall be vested in a Chief and Assistant Chief, and exercise any authority delegated to him by the provisions of this constitution. In accordance with Article IV, unless otherwise provided for in the Constitution, no enactment of the General Council shall be considered valid unless supported by a majority of those voting in a legal meeting; and
- (2) Therefore, it is vested with the General Council and the Executive to conduct the governance of the Seminole Nation and to act on behalf of the Nation, or delegate that authority; and
- (3) It is incumbent on every tribal official or tribal employee to serve responsibly in the best interests of the Nation and is required by law to abide by the enumeration of powers provided for in the Seminole Nation Constitution.

(b) Limitations:

- (1) It shall be deemed unethical for any tribal official or tribal employee to:
  - (A) On behalf of the Seminole Nation of Oklahoma, officially contact or initiate contact, through correspondence or any form of communication, any federal, state, or third-party official without delegation of authority either from the Seminole Nation General Council or the Seminole Nation Chief, or Assistant Chief; or
  - (B) On behalf of the Seminole Nation of Oklahoma, officially contact or instigate contact, through correspondence or any form of communication, any federal, state, or third-party official without

delegation of authority from the appropriate supervisory individual, manager, director, board, commission, committee, or task force within the chain-of command.

- (2) It shall be unethical for any tribal official or tribal employee to:
  - (A) Represent verbally or in writing to any person, any federal, state, or third-party official that you can bind the Seminole Nation or consent on behalf of the Nation or any of its subordinate programs, board, commission, committee, or task force, businesses, or enterprises without delegation of authority either from the Seminole Nation General Council or the Seminole Nation Chief, or Assistant Chief; or
  - (B) Represent verbally or in writing to any person, any federal, state, or third-party official that you can bind the Seminole Nation or consent on behalf of the Nation or any of its subordinate programs, board, commission, committee, or task force, businesses, or enterprises without delegation of authority from the appropriate supervisory individual, manager, director, board, commission, committee, or task force within the chain-of command.

(c) Consequences. Any tribal official or tribal employee who violates the ethical responsibilities contained herein shall be subject to the following:

- (1) General Council Representatives shall be deemed to have committed actions that constitute misconduct reflecting on the dignity and integrity of the General Council subject to the due process requirements for removal contained in the Seminole Nation Constitution, Article IX, Section 1;
- (2) Other Tribal Officials shall be deemed to have committed actions that constitute misconduct or cause for removal from their respective office subject to the due process requirements for removal contained the terms of their appointment;
- (3) Employees of the Nation shall be deemed to have committed actions that constitute misconduct or cause for immediate termination from employment subject to the labor laws and policies of the Nation.

[HISTORY: Enacted by TO 2011-15, October 29, 2011.]

**TITLE 16A**  
**SEMINOLE NATION INDEPENDENCE DAY**  
**INDEX**

<b>TITLE 16A SEMINOLE NATION INDEPENDENCE DAY INDEX .....</b>	<b>i</b>
<b>TITLE 16A SEMINOLE NATION INDEPENDENCE DAY .....</b>	<b>1</b>
<b>CHAPTER ONE.....</b>	<b>1</b>
Section 101. Seminole Nation Independence Day .....	1

**TITLE 16A**  
**SEMINOLE NATION INDEPENDENCE DAY**

**CHAPTER ONE**

**Section 101. Seminole Nation Independence Day**

The descendants of our Seminole forefathers in recognition and honor of their valiant achievement to perpetuate our sovereignty for the posterity do hereby sanction a day of recognition annually on August 7th as our official Seminole Nation Independence Day.

[HISTORY: Enacted by TO 2004-28, September 4, 2004.]



**TITLE 17  
HEALTH  
INDEX**

<b>TITLE 17 HEALTH INDEX .....</b>	<b>i</b>
<b>TITLE 17 HEALTH.....</b>	<b>1</b>
<b>CHAPTER ONE HEALTH DEPARTMENT OF THE SEMINOLE NATION.....</b>	<b>1</b>
Section 101. Health Department .....	1
Section 102. Administration .....	1
Section 103. Primary Health Coordinator.....	1
Section 104. Goal .....	1
<b>CHAPTER TWO WEWOKA SERVICE UNIT HEALTH ADVISORY BOARD .....</b>	<b>2</b>
Section 201. Purpose .....	2
Section 202. Establishment .....	2
Section 203. Bylaws .....	2
Section 204. Representation on the Oklahoma Indian Health Advisory Board.....	2
<b>CHAPTER THREE SEMINOLE NATION HEALTH BOARD .....</b>	<b>3</b>
Section 301. Purpose .....	3
Section 302. Establishment .....	3
Section 303. Bylaws .....	3
Section 304. Authority .....	3

## **TITLE 17 HEALTH**

### **CHAPTER ONE HEALTH DEPARTMENT OF THE SEMINOLE NATION**

#### **Section 101. Health Department**

This ordinance hereby establishes a Tribal Health Department for the Seminole Nation of Oklahoma and supersedes, and suspends Ordinance No. 72-2 entitled “An Ordinance for a Community Health Representative Program for the Seminole Nation of Oklahoma” and all other ordinances specifically directed toward delivery of health services and intent.

[HISTORY: Enacted by TO 72-2, June 3, 1972; amended by TO 80-1, March 8, 1980; codified by TO 91-12, November 16, 1991.]

#### **Section 102. Administration**

The Seminole Nation Health Department will function under the administrative framework of the Tribal Executive Office. The Principal Chief, with assistance from the Seminole Nation Health Advisory Board in an advisory capacity and the Health Department Staff, will cooperatively establish the direction of the Health Department's philosophy, goals and objectives, and implement policies and procedures in keeping with the Seminole Nation's desires and concerns.

[HISTORY: Ordinance No. 72-2, June 3, 1972; Ordinance No. 80-1, March 8, 1980; Codified by Law No. 91-12, November 16, 1991.]

#### **Section 103. Primary Health Coordinator**

The Seminole Nation Health Department's primary aim is to be the primary health planer and coordinator of health services for the Indian people within Seminole County.

[HISTORY: Enacted by TO 72-2, June 3, 1972; amended by TO 80-1, March 8, 1980; codified by TO 91-12, November 16, 1991.]

#### **Section 104. Goal**

The Health Department, in order to meet the responsibilities assigned, will adopt as its overall goal, the following: “Raise the health level of the Seminole Nation of Oklahoma by providing a health system that assures each Indian individual, family and community, a healthful quality of life with timely access to appropriate health services delivered by competent professionals.”

[HISTORY: Enacted by TO 72-2, June 3, 1972; amended by TO 80-1, March 8, 1980; codified by TO 91-12, November 16, 1991.]

## **CHAPTER TWO**

### **WEWOKA SERVICE UNIT HEALTH ADVISORY BOARD**

#### **Section 201. Purpose**

The purpose of this ordinance is to provide for the establishment of a multi-tribal advisory board for the Wewoka Service Unit and to provide for the designation of the tribal representative to the Oklahoma Indian Health Advisory Board.

[HISTORY: Enacted by TO 89-03, May 22, 1989; codified by TO 91-12,  
November 16, 1991.]

#### **Section 202. Establishment**

There is hereby authorized to be established for the Wewoka Service Unit a seven (7) member advisory board whose membership shall consist of five (5) duly authorized representatives of the Seminole Nation and two (2) duly authorized representatives of the Muscogee (Creek) Nation.

[HISTORY: Enacted by TO 89-03, May 22, 1989; codified by TO 91-12,  
November 16, 1991.]

#### **Section 203. Bylaws**

The affairs of the Board created under the authority of section 202 of this Chapter shall be governed by written by-laws adopted by the Board and approved by the General Council of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 89-03, May 22, 1989; codified by TO 91-12,  
November 16, 1991.]

#### **Section 204. Representation on the Oklahoma Indian Health Advisory Board**

To ensure maximum participation in the affairs of the Oklahoma Indian Health Advisory Board, the official tribal delegate to the OIHAB shall be the Principal Chief or the Assistant Chief when so requested by the Principal Chief.

[HISTORY: Enacted by TO 89-03, May 22, 1989; codified by TO 91-12,  
November 16, 1991.]

## **CHAPTER THREE**

### **SEMINOLE NATION HEALTH BOARD**

#### **Section 301. Purpose**

The purpose of this ordinance is to provide for the establishment of a Seminole Nation Health Board whose members are only Seminole for the purpose of overseeing all of the Health Services provided at any and all facilities that are owned or controlled by the Seminole Nation of Oklahoma, except the Wewoka Service Unit, and to provide for the designation of tribal representatives to the Seminole Nation Health Board.

[HISTORY: Enacted by TO 2002-01, January 12, 2002.]

#### **Section 302. Establishment**

There is hereby authorized to be established, for facilities that are owned or controlled by the Seminole Nation of Oklahoma which provide health services, a five (5) member advisory board whose membership shall consist of the five (5) duly authorized Seminole Nation members to the Wewoka Service Unit Health Advisory Board.

[HISTORY: Enacted by TO 2002-01, January 12, 2002.]

#### **Section 303. Bylaws**

The affairs of the Seminole Nation Health Board created under the authority of Section 302 shall be governed by written by-laws adopted by the Board and approved by the General Council of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2002-01, January 12, 2002.]

#### **Section 304. Authority**

Such by-laws as created under section 303 shall not be effective until approved, and the Seminole Nation Health Board is not authorized to take any actions until the by-laws are approved. Further, no actions of the Seminole Nation Health Board will be effective if they exceed the scope of authority set forth in this Chapter, or in the by-laws.

[HISTORY: Enacted by TO 2002-01, January 12, 2002.]

**TITLE 18  
HOUSING  
INDEX**

<b>TITLE 18 HOUSING INDEX.....</b>	<b>i</b>
<b>TITLE 18 HOUSING.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101.    Applicability .....	1
Section 102.    Jurisdiction.....	1
Section 103.    Purposes and Interpretation.....	2
Section 104.    Relation to Other Laws .....	3
Section 105.    Definitions .....	4
<b>CHAPTER TWO LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES.....</b>	<b>7</b>
Section 201.    Rental Agreements .....	7
Section 202.    Rules and Regulations .....	7
Section 203.    Landlord Responsibilities .....	8
Section 204.    Tenant Responsibilities.....	9
Section 205.    Tenant Remedies .....	10
Section 206.    Landlord Remedies.....	11
Section 207.    Abandoned Dwelling Units.....	11
<b>CHAPTER THREE GROUNDS FOR EVICTION/NOTICE TO PRE-EVICTION OPTIONS .....</b>	<b>13</b>
Section 301.    Grounds for Eviction .....	13
Section 302.    Notice to Quit Requirements.....	13
Section 303.    Serving the Notice to Quit .....	14
Section 304.    Pre-Eviction Options .....	15
<b>CHAPTER FOUR JUDICIAL EVICTION PROCEDURES.....</b>	<b>17</b>
Section 401.    Summons and Complaint.....	17
Section 402.    Action Upon Filing Complaint .....	17
Section 403.    Commencement of Proceedings.....	18
Section 404.    Defenses.....	18
Section 405.    Discovery and Pre-hearing Proceedings .....	19
Section 406.    Evidence .....	19
Section 407.    Burden of Proof.....	20
Section 408.    Judgment.....	20

Section 409.	Form of Judgment .....	21
Section 410.	Execution of Judgment .....	21
Section 411.	Stay of Execution .....	22
Section 412.	Appeals .....	22
Section 413.	Miscellaneous Complaints and Claims.....	22
Section 414.	Notice to Leave the Premises .....	23
Section 415.	Forcible Eviction.....	23
Section 416.	No Self-Help Eviction .....	24
Section 417.	Security Deposits.....	24
<b>CHAPTER FIVE TRIBAL MORTGAGE ACT.....</b>		<b>26</b>
Section 501.	Lien Priority .....	26
Section 502.	Recording of Mortgage Loan Documents .....	26
Section 503.	Foreclosure Procedures.....	27
Section 504.	Foreclosure Complaint and Summons.....	29
Section 505.	Service of Process and Procedures .....	30
Section 506.	Cure of Default.....	30
Section 507.	Judgment and Remedy.....	31
Section 508.	Foreclosure Evictions .....	32
Section 509.	No Merger of Estates.....	34
Section 510.	Certified Mailing to the Nation .....	34
Section 511.	Intervention .....	34
Section 512.	Appeals .....	35
Section 513.	Conflict with Other Laws. ....	35
<b>CHAPTER SIX MISCELLANEOUS PROVISIONS .....</b>		<b>36</b>
Section 601.	Effective Date .....	36
Section 602.	Retroactive Effect.....	36
<b>CHAPTER SEVEN [RESERVED].....</b>		<b>37</b>
<b>CHAPTER EIGHT [RESERVED].....</b>		<b>38</b>
<b>CHAPTER NINE GROUP DWELLING COVERAGE BENEFIT PROGRAM AND REGULATION ACT .....</b>		<b>39</b>
Section 901.	Short Title .....	39
Section 902.	Findings .....	39
Section 903.	Purpose; Scope.....	39
Section 904.	Definitions .....	40
Section 905.	Group Dwelling Coverage Benefit Authorization.....	40

Section 906.	Eligibility .....	40
Section 907.	Payment of Contributions and Premiums .....	41
Section 908.	Annual Report.....	41
Section 909.	Licensing Requirement.....	41
Section 910.	Application for License .....	41
Section 911.	Filing of Policy Forms and Related Documents .....	42
Section 912.	Filing of Financial Statements and Activities Report .....	42
Section 913.	Misrepresentations Prohibited .....	42
Section 914.	Claims Handling.....	43
Section 915.	Complaints .....	43
Section 916.	Penalties .....	43
Section 917.	Regulations .....	43
Section 918.	Applicable Law; Duty of Good Faith.....	44
Section 919.	Service of Process .....	44
Section 920.	Consent to Jurisdiction .....	44
Section 921.	Judicial Review .....	44
Section 922.	Sovereign Immunity .....	44
Section 923.	Severability .....	44
Section 924.	Effective Date .....	45

# **TITLE 18 HOUSING**

## **CHAPTER ONE GENERAL PROVISIONS**

### **Section 101. Applicability**

(a) The following title shall hereinafter be referred to as the “Seminole Nation of Oklahoma Tribal Housing Ordinance.” It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building.

(b) The following arrangements are not governed by this Ordinance:

- (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (2) Occupancy in a hotel, motel, or other commercial lodging.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 102. Jurisdiction**

(a) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:

- (1) The exterior boundaries of the Reservation;
- (2) Lands owned by, held in trust for, leased or used by the Nation, its members, its housing authority, or any other entity of the Nation; or
- (3) The Indian Country of the Nation, as may be defined from time to time by the laws of the Nation or of the United States.

(b) Jurisdiction is extended over all persons or entities within the jurisdiction of the Nation, who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Nation, whether they are Indian or non-Indian, and whether they have a place of business within the Tribal Reservation. Any act within the



Reservation dealing with the subject matter of this Ordinance shall be subject to the jurisdiction of the Nation.

(c) Jurisdiction is extended over:

- (1) All buildings which may lie upon lands owned by, held in trust for, leased or used by the Nation, its members, its Housing Authority, or any other entity of the Nation.
- (2) All persons or entities within the jurisdiction of the Nation who lease, mortgage, or otherwise secure an interest in a building.
- (3) All persons supplying contracting services to the Housing Authority of the Seminole Nation. As a precondition to any contract for services between the Housing Authority of the Seminole Nation and any person supplying contracting services, (e.g. construction, rehabilitation, electrical, plumbing), the contractor shall be deemed to have submitted themselves to the jurisdiction of the Seminole Nation of Oklahoma, including its courts or tribunals, and including the Seminole Nation Housing Authority for all purposes under any agreement between the Seminole Nation Housing Authority and the contractor.

(d) Jurisdiction over all matters arising within the jurisdiction of the Nation with respect to the subjects of this Ordinance, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Ordinance shall be exercised by the Tribal Court.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Purposes and Interpretation**

This Ordinance shall be interpreted and construed to fulfill the following purposes:

- (a) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.
- (b) To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter or reside on the Reservation.
- (c) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- (d) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a tribal resource.
- (e) To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees, of buildings.

(f) To avail the Nation, tribal entities, and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Nation by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.

(g) To establish laws and procedures which are necessary in order to obtain governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase, or renovation.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 104. Relation to Other Laws**

(a) **Applicable Law.** Unless affected or displaced by this Ordinance, principles of law and equity in the common law of the Nation and tribal customs and traditions are applicable, and the general principles of law common to foreign jurisdictions may be used as a guide to supplement and interpret this Ordinance.

(b) **Other Applicable Laws.** Additional tribal and federal laws may apply with regard to tribal housing, such as the ordinance establishing the Indian Housing Authority and governmental housing laws and regulations.

(c) **Conflicts with Other Laws.**

(1) **Tribal Laws:** To the extent that this Ordinance may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Ordinance if the general law has specific applicability and it is clearly in conflict with the provisions of this Ordinance.

(2) **Federal Laws:** Where a conflict may appear between this Ordinance and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Ordinance.

(3) **State Laws:** To the extent that the laws of any state may be applicable to the subject matter of this Ordinance, such laws shall be read to be advisory only and not directly binding and shall not govern the relations of the parties.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 105. Definitions**

As used in this Ordinance, the following words will have the meanings given them in this Section unless the context plainly requires otherwise:

(a) “Action,” “suit or lawsuit,” “claim,” “complaint” or “defense” shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units, or the relationships between owners and occupiers of such units, including the right to occupy them.

(b) “Adult Person” is any person eighteen (18) years of age or older.

(c) “Borrower/Mortgagor” is the Seminole Nation of Oklahoma, the Housing Authority of the Seminole Nation, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Seminole Nation or such Indian(s) or non-Indian(s) who has executed a mortgage as defined in this Ordinance or a leasehold mortgage as defined in this Ordinance.

(d) “Building” is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.

(e) “Building or Housing Ordinances” are any law, ordinance, or governmental regulation of the Seminole Nation of Oklahoma or an agency of the United States which deal with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.

(f) “Dwelling Unit” is a house, mobile home, or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.

(g) “Guest” is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.

(h) “He/His” means he or she, his or her, and the singular includes the plural.

(i) “Housing Authority” is the Housing Authority of the Seminole Nation which is the Tribally Designated Housing Entity, authorized or established under the authority of the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104- 330).

(j) “Indian” is any person recognized as being an Indian or Alaska Native by any Nation, or by the government of the United States.

(k) “Landlord” can be the Seminole Nation of Oklahoma, Housing Authority of the Seminole Nation, a person, entity, or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.

(l) “Lease” is an agreement, written or oral, as well as valid rules and regulations, regarding the tenants and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.

(m) “Leasehold Mortgage” is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the Indian Housing Authority, or any other agreement entered between a borrower/mortgagor and a lender/mortgagee.

(n) “Mortgage Foreclosure Proceeding” is a proceeding:

- (1) To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in real property, a building, mobile home or in the case of a leasehold mortgage, a lease for which a mortgage has been given under the home purchase program of any federal agency; and
- (2) To assign where appropriate the borrower(s)/mortgagor(s) interest to a designated assignee.

(o) “Lender Designated Assignee.” Any lender as defined in this Ordinance may assign or transfer its interest in a mortgage or lease and/or leasehold mortgage to a designated assignee.

(p) “Lender/Mortgagee” is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Seminole Nation of Oklahoma, the Housing Authority of the Seminole Nation, an Indian Housing Authority, or a U.S. government agency or private individual which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home, including a mobile home. It is also any lender designated assignee(s) or successor(s) of such lender/mortgagee.

(q) “Lessor” is the legal, beneficial, or equitable owner of property under a lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.

(r) “Lessee” is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help Program. The lessee may, for purposes of federal agency home mortgage programs, be the Housing Authority of the Seminole Nation.

(s) “Mortgage” is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building, mobile home or land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

(t) “Mortgagor/Borrower” - see Borrower/Mortgagor.

(u) “Mortgagee/Lender” - see Lender/Mortgagee.

(v) “Mobile Home” is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.

(w) “Nuisance” is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(x) “Owner” is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

(y) “Person” includes the Seminole Nation, Housing Authority of the Seminole Nation, an individual or organization, and where the meaning of a portion of this Ordinance requires, it means a public agency, corporation, partnership, or any other entity.

(z) “Premises” is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.

(aa) “Rent” is all periodic payments to be made to a landlord or lessor under a lease.

(bb) “Rental Agreement” - see Lease.

(cc) “Reservation” is the Seminole Reservation as defined by the Constitution of the Seminole Nation of Oklahoma.

(dd) “Shall,” for the purposes of this Ordinance, will be defined as, mandatory or must.

(ee) “Subordinate Lienholder” is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under this Ordinance, except the Nation shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

(ff) “Tenant” is the lessee(s), sublessee(s), or person(s) entitled under a lease or mutual help occupancy agreement or lease with option to purchase agreement to occupy a dwelling unit to the exclusion of others.

(gg) “Tribal Court” is the Court for the Seminole Nation, as established by the laws of this Nation or such body as may now or hereafter be authorized by the laws of the Nation to exercise the powers and functions of a Court of law.

(hh) “Nation” is the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; definition in subsection (gg) modified on December 22,

2016 to remove reference to CFR Court pursuant to authority granted by SNC  
Title 21, § 203.]

## **CHAPTER TWO**

### **LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES**

#### **Section 201. Rental Agreements**

(a) Effect of Rental Agreements. The provisions of this Ordinance, as well as the applicable laws identified in § 104, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent therewith, rental agreements shall supplement these minimum rights and responsibilities.

(b) Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his rights or remedies under this Ordinance or any other applicable laws as identified in § 104; (2) to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; (3) to permit the landlord to dispossess a tenant without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in § 301(a). A provision prohibited by this subsection shall be void and unenforceable.

(c) Term of Tenancy. In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.

(d) Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the landlord's office. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection  
numbering scheme modified on August 26, 2016 pursuant to authority granted by  
SNC Title 21, § 203.]

#### **Section 202. Rules and Regulations**

(a) The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.

(b) Such rules and regulations are enforceable against the tenant only if:

- (1) their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for all the tenants generally;
- (2) the rules and regulations are reasonably related to the purpose for which they are adopted;

- (3) the rules and regulations apply to all tenants in the premises in a fair manner;
- (4) the rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he shall or shall not do to comply.

(c) If a rule or regulation that would result in a substantial modification of the terms of the rental agreement is adopted after the tenant enters into the rental agreement, such rule or regulation is not valid as to that rental agreement unless the tenant consents to such rule or regulation in writing.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 203. Landlord Responsibilities**

Except as otherwise fairly and reasonably provided in a rental agreement or a mutual help occupancy agreement or lease with option to purchase agreement, each landlord subject to the provisions of this Ordinance shall:

- (a) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (b) Comply with applicable building and housing ordinances.
- (c) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant or his guest, in which case such duty shall be the responsibility of the tenant.
- (d) Keep common areas clean, safe, and secure.
- (e) Ensure tenant access to the dwelling unit.
- (f) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant.
- (g) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste, except to the extent the tenant is required to provide such for himself.
- (h) Provide running water, hot water, and heat in accordance with applicable building and housing ordinances, except to the extent the tenant is required to provide such for himself.
- (i) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not

cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.

(j) Give sole possession of the dwelling unit to the tenant in accordance with the rental agreement and refrain from:

- (1) entering the unit, except as authorized in § 204(k);
- (2) making repeated demands for entry otherwise lawful under § 204(k) but which have the effect of unreasonably harassing the tenant;
- (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or
- (4) locking the tenant out of his dwelling unit without the tenant's consent.

(k) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this Ordinance, the person authorized to manage the dwelling unit, the owner of the premises or his agent, and the person responsible for making repairs, where they are required.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 204. Tenant Responsibilities**

Except as otherwise fairly and reasonably provided in a rental agreement or mutual help occupancy agreement, each tenant subject to the provisions of this Ordinance shall:

- (a) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (b) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.
- (c) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (d) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (e) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner.
- (f) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to



repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage.

(g) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.

(h) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord.

(i) Use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it.

(j) Abide by all rules and regulations promulgated by the landlord in accordance with § 202 of this Ordinance.

(k) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants; provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 205. Tenant Remedies**

(a) Conditions. Where a landlord has not complied with his responsibilities regarding dwelling unit conditions, as set forth in § 203 of this Ordinance or with the terms of his lease, and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time (such period shall be of not less than 30 days), to cure his noncompliance, the tenant may:

- (1) Withhold rent in cases where the landlord's noncompliance renders the dwelling unit uninhabitable;
- (2) Make necessary repairs and deduct the cost of such repairs from his rent;
- (3) Institute an action in the Tribal Court seeking:
  - (A) an order compelling the landlord to comply with his responsibilities as set forth in § 203 of this Ordinance;

- (B) an award of money damages, which may include a retroactive abatement of rent; and/or
- (C) such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action. Where a landlord violates his responsibilities as set forth in § 203(i) or § 203(j) of this Ordinance, damages shall be not less than an amount equal to one month's rent and tenant shall be further entitled to reasonable attorney's fees; or

(4) Terminate the rental agreement.

(b) Identification of Landlord. Where a landlord fails to identify himself to the tenant in accordance with § 203(k) of this Ordinance, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 206. Landlord Remedies**

Where a tenant has not complied with this Ordinance or the agreement of the parties, the landlord has the right to:

- (a) Give reasonable notice to the tenant to comply with his obligations, pay any monies due and owing under the agreement of the parties, or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.
- (b) Require repairs or maintenance which are the responsibility of the tenant, and compliance with reasonable rules and regulations for occupancy.
- (c) Seek a court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 207. Abandoned Dwelling Units**

Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return, which is evidenced by removal of possessions, nonpayment of rent, disconnected

utilities, or expressed to the landlord or third party) a landlord, without further notice to the tenant, may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions, in accordance with § 415 of this Ordinance. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Nation in order to return these items. The landlord need not comply with the procedures set forth in Chapter 3 of this Ordinance to obtain possession of a dwelling unit which has been abandoned.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE**

### **GROUND S FOR EVICTION/NOTICE TO PRE-EVICTION OPTIONS**

#### **Section 301. Grounds for Eviction**

A person may be evicted for:

(a) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

(b) Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.

(c) Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quite enjoyment of a dwelling unit.

(d) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with § 202, this Ordinance, or any applicable building or housing ordinances.

(e) Occupation of any premises without permission or agreement following any reasonable demand by a person in authority over the premises to leave.

(f) Under other terms in the rental agreement which do not conflict with the provisions of this Ordinance.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 302. Notice to Quit Requirements**

(a) When Notice to Quit is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in § 301, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this Chapter.

(b) Purpose of Notice to Quit. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.

(c) Statement of Grounds for Eviction Required. The notice to quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable

reasons(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

(d) Form of Notice. The notice shall be in writing substantially in the following form:

“I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason(s) for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing).”

(e) Time Requirements for Notice. The notice must be delivered within the following periods of time:

- (1) No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
- (2) No less than three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.
- (3) No less than fourteen (14) calendar days in all other situations.

(f) Indian Housing Authority Termination Notice. When the landlord is an Indian Housing Authority, the housing authority termination notice shall qualify as the notice to quit required under this section so long as the time requirements of the housing authority termination notice are at least as long as the time requirements set forth in § 302(e) of this Ordinance.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 303. Serving the Notice to Quit**

Any notice to quit must be in writing, and must be delivered to the tenant in the following manner:

- (a) Delivery must be made by an adult person.
- (b) Delivery will be effective when it is:

- (1) Personally delivered to a tenant with a copy delivered by mail, or
- (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
- (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

(c) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:

- (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
- (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place, and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

(d) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 304. Pre-Eviction Options**

(a) **Negotiated Settlement.** After a notice to quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

(b) **Stay of Proceedings.** Where the parties mutually agree in good faith to proceed with such discussions, and judicial eviction procedures have been initiated, the court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

(c) **Settlement Options.** In reaching an agreement, the parties may consider, but are not limited to the following options:

- (1) The parties may employ the use of advocates or attorneys;
- (2) The parties may employ the use of a mediator or conciliator;
- (3) The parties may agree to arbitrate the issues in binding arbitration;

- (4) The parties may agree to options set forth in Section § 408(a)(4)-(8);
- (5) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
- (6) The parties may agree to dismiss the matter in exchange for any agreement reached;
- (7) The parties may agree to stipulate to a judgment to be entered by the court.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FOUR**

### **JUDICIAL EVICTION PROCEDURES**

#### **Section 401. Summons and Complaint**

If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- (a) The names of the adult tenant(s) against whom the suit is brought;
- (b) A description of the rental agreement, if any;
- (c) The address or reasonable description of the location of the premises;
- (d) The grounds for eviction;
- (e) A statement showing that the notice to quit and any required termination notices have been served in accordance with this Ordinance or other applicable law; and
- (f) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- (g) If the landlord is an Indian Housing Authority, a statement that the Indian Housing Authority has complied with all required regulatory processes prior to filing the eviction action.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 402. Action Upon Filing Complaint**

When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with § 401 and served as set forth in § 303, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance for answering the complaint shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisance or ten (10) calendar days in all other cases. Upon setting of the date for appearance, the plaintiff shall have defendant served with the complaint and a summons to appear for the court date.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



### **Section 403. Commencement of Proceedings**

(a) If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.

(b) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular court day following that date.

(c) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in § 301(c), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

(d) The Court may, in its discretion, on motion from the landlord, order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 404. Defenses**

The Court shall grant the remedies allowed in this Ordinance, unless it appears by the evidence that:

(a) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

(b) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.

(c) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.

(d) That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

(e) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.

(f) The landlord is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.

(g) The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his rights under this Ordinance or to force the landlord to comply with his duties under this Ordinance.

(h) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 405. Discovery and Pre-hearing Proceedings**

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed no less than five (5) calendar days before the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 406. Evidence**

Evidence in proceedings under this Ordinance shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the landlord with respect to the agreement of the parties will be received in evidence upon their presentation to the Court; provided, however, that a tenant may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner. At the discretion of the judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice; confuse the issues; or, mislead the jury, or

unfairly surprise the opposing party. Upon request of a party, the Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 407. Burden of Proof**

The burden of proof in all proceedings under this Ordinance shall be preponderance of the evidence showing an assertion or defense to be more likely true than not.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 408. Judgment**

(a) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the landlord;
- (2) Grant actual damages as provided in the agreement of the parties or this Ordinance, including interest;
- (3) Order the parties to carry out an obligation required by law;
- (4) Establish a payment plan for the tenant;
- (5) Order rent payments out of per capita payment or through garnishment;
- (6) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (7) Remediate the action in part or in whole through appropriate recalculation of rent;
- (8) Order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
- (9) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;
- (10) Order the parties into negotiations as provided in Section § 304 of this Ordinance; or

(11) Grant any relief provided in this Ordinance or allowed in law or equity.

(b) If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 409. Form of Judgment**

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 410. Execution of Judgment**

(a) An eviction order may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall:

- (1) remove all the evicted persons from the dwelling and verbally order them not to re-enter;
- (2) provide a copy of the order of eviction to all adult tenants;
- (3) post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and
- (4) supervise the removal of the possessions of the evicted persons.

(b) Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure Ordinance and/or tribal small claims procedure Ordinance. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 411. Stay of Execution**

If judgment for possession of the dwelling unit enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order within five (5) days of the judgment being rendered, if the following is established:

- (a) Good and reasonable grounds affecting the well-being of the party are stated;
- (b) There would be no substantial prejudice or injury to the prevailing party during the period of the stay;
- (c) Execution of the judgment could result in extreme hardship for the tenant(s); or
- (d) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 412. Appeals**

Appeals under this Ordinance shall be handled according to the general tribal appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Ordinance unless otherwise ordered by the Court.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 413. Miscellaneous Complaints and Claims**

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Ordinance may be made under the general tribal civil procedure Ordinance and 25 CFR Part 11 and/or tribal small claims procedure, if any.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 414. Notice to Leave the Premises**

Any notice to leave a premises shall be by written order of the court and shall be delivered to the tenant in the following manner:

- (a) Delivery shall be made by:
  - (1) A law enforcement officer of the Nation or an agency of the United States Government, or
  - (2) Any person authorized by the Tribal Court.
- (b) Delivery will be effective when it is:
  - (1) Personally delivered to a tenant with a copy delivered by mail, or
  - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
  - (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (c) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
  - (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
  - (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 415. Forcible Eviction**

(a) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (c) below.

(b) Following eviction, the Court may allow the landlord, the Indian Housing Authority or the United States Government access to any property leased by either of them for purposes of preserving and securing it.

(c) Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return these items.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 416. No Self-Help Eviction**

No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to quit and obtain a court order as provided in this Ordinance.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 417. Security Deposits**

(a) **Security Deposit Limits.** A landlord may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.

(b) **Payment of Security Deposit at Termination of Tenancy.** The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit was deposited less the value of any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a

result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.

(c) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of his security deposit which may be due.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## CHAPTER FIVE TRIBAL MORTGAGE ACT

### Section 501. Lien Priority

All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including leasehold mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. In those cases where the government direct, guarantee or insured mortgage is crated as a second mortgage, the loan shall assume that position.

[HISTORY: Enacted by TO 2003-11, March 4, 2003, amended by TO 2014-08, Oct. 18, 2014; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### Section 502. Recording of Mortgage Loan Documents

(a) The Tribal Recording Clerk shall maintain in the Housing Authority of the Seminole Nation of Oklahoma (“HASNOK”) a system for the recording of mortgage loans and such other documents as the Nation may designate by laws or resolution.

(b) The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:

- (1) The date and time of receipt of the mortgage or other document;
- (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received and;
- (3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(c) Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

The Seminole Nation of Oklahoma    )  
\_\_\_\_\_ ) ss.  
\_\_\_\_\_ )

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL) \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Date)

(d) The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

(e) The Tribal Recording clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered:

- (1) The name(s) of the borrower/mortgagor of each mortgage, identified as such;
- (2) The name(s) of the lender/mortgagee of each mortgage loan, identified as such;
- (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
- (4) The date and time of the receipt;
- (5) The filing number assigned by the Tribal Recording Clerk; and
- (6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(f) The certified copies of the mortgages and other documents and the log maintained by the Housing Authority shall be made available for public inspection and copying. Rules for copying shall be established and designated by the Housing Authority.

(g) All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

[HISTORY: Enacted by TO 2003-11, March 4, 2003, amended by TO 2014-08, October 18, 2014; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 503. Foreclosure Procedures**

(a) A borrower/mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the lender/mortgagee (i.e., the 31st day from the payment due date).

(b) When a borrower/mortgagor becomes thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the lender/mortgagee shall complete the following:

- (1) Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet with the borrower/mortgagor at the mortgaged property.
- (2) Lender/Mortgagee shall document that it has made at least one phone call to the borrower/mortgagor (or the nearest phone as designated by the borrower/mortgagor, able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to-face interview.

(c) Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.

(d) Before the borrower/mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the lender shall advise the borrower/mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Nation, as follows:

- (1) Advise the borrower/mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.
- (2) Advise the borrower/mortgagor of homeownership counseling opportunities/programs available through the lender or otherwise.
- (3) Advise the borrower/mortgagor of other available assistance regarding the mortgage/default.
- (4) In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements:
  - (A) notify the borrower/mortgagor that if the leasehold mortgage remains past due on three installment payments, the lender/mortgagee may ask the applicable governmental agency to accept assignment of the leasehold mortgage if this is a requirement of the governmental program;
  - (B) notify the borrower/mortgagor of the qualifications for forbearance relief from the lender/mortgagee, if any, and that forbearance relief may be available from the government if the mortgage is assigned; and

- (C) provide the borrower/mortgagor with names and address of government officials to whom further communications may be addressed, if any.

(e) If a borrower/mortgagor is past due on three or more installment payments and the lender/mortgagee has complied with the procedures set forth in the first part of this Section, the lender/mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in § 504 of this Ordinance.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by TO 2014-08, October 18, 2014; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 504. Foreclosure Complaint and Summons**

(a) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

- (1) The name of the borrower/mortgagor and each person or entity claiming through the borrower/mortgagor subsequent to the recording of the mortgage, including each subordinate lienholder (except the Nation with respect to a claim for a tribal leasehold), as a defendant;
- (2) A description of the property subject to the mortgage;
- (3) A concise statement of the facts concerning the execution of the mortgage loan or in the case of a leasehold mortgage the lease; the facts concerning the recording of the mortgage or the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action;
- (4) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a “security instrument”) and any other documents relating to the property, and if a leasehold mortgage, a copy of the lease and any assignment of any of these documents; and
- (5) Any applicable allegations concerning relevant requirements and conditions prescribed in:
  - (A) federal statutes and regulations
  - (B) tribal codes, ordinances and regulations; and/or
  - (C) provisions of the promissory note, security instrument and, if a leasehold mortgage, the lease.

(b) The complaint shall be provided to the Tribal Court Clerk along with a summons specifying a date and time of appearance for the defendant(s).

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by TO 2014-08, October 18, 2014; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 505. Service of Process and Procedures**

Any foreclosure complaint must be in writing, and must be delivered to the borrower/mortgagor in the following manner:

- (a) Delivery must be made by an adult person and is effective when it is:
  - (1) Personally delivered to a borrower/mortgagor with a copy sent by mail, or
  - (2) Personally delivered to an adult living in the property with a copy sent by mail, or
  - (3) Personally delivered to an adult agent or employee of the borrower/mortgagor with a copy sent by mail.

(b) If the notice cannot be given by means of personal delivery, or the borrower/mortgagor cannot be found, the notice may be delivered by means of:

- (1) Certified mail, return receipt requested, at the last known address of the borrower/mortgagor, or
- (2) Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the borrower/mortgagor at the premises.

(c) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by Ordinance TO 2014-08, October 18, 2014; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 506. Cure of Default**

Prior to the entry of a judgment of foreclosure, any borrower/mortgagor or a subordinate lienholder may cure the default(s) under the mortgage by making a full payment of the delinquency to the lender/mortgagee and all reasonable legal and court costs incurred in foreclosing on the property. Any subordinate lienholder who has cured a default shall thereafter

have included in its lien the amount of all payments made by such subordinate lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by Ordinance TO 2014-08, October 18, 2014; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 507. Judgment and Remedy**

(a) This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the borrower\mortgagor. If the alleged default has not been cured at the time of trial, the Tribal Court shall enter judgment:

- (1) Foreclosing the interest of the borrower\mortgagor and each other defendant, including subordinate lienholder, in the mortgage property and
- (2) Granting title to the property to the lender/mortgagee or the lender's designated assignee; in the case of a leasehold mortgage, the lease and the leasehold estate will be assigned to the lender/mortgagee or the lender's designated assignee, subject to the following provisions:
  - (A) The lender shall give the Nation the right of first refusal on an acceptable offer to purchase the lease and the lessee's leasehold interest in the property described in the lease which is subsequently obtained by the lender or lender's designated assignee.
  - (B) The lender or lender's designated assignee may only transfer, sell or assign the lease and lessee's leasehold interest in the property described in the lease to a Tribal member, the Nation or the Housing Authority of the Seminole Nation.
  - (C) The borrower/mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Nation for Section 248.
  - (D) The borrower/mortgagee has the right to convey the leasehold interest to the Secretary of the United States Department of Veteran Affairs ("VA") without providing the right of first refusal to the Nation for VA Native American Direct Loans.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by TO 2014-08, October 18, 2014; amended by TO 2015-05, June 6, 2015; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 508. Foreclosure Evictions**

Foreclosure evictions shall be handled according to the general eviction process set below.

(a) **Jurisdiction.** The provisions of this Section shall apply to all persons and property subject to the governing authority of the Nation as established by the Tribal Constitution, Tribal Code, or applicable federal law.

(b) **Unlawful Detainer.** A lessee, sublessee, or other occupant of a leasehold estate subject to a leasehold mortgage shall be guilty of unlawful detainer if such a person shall continue in occupancy of such leasehold estate, without the requirement of any notice by the lessor, after such person's leasehold estate has been foreclosed in a leasehold mortgage foreclosure proceeding in Tribal Court.

(c) **Complaint and Summons.** The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing the Tribal Court, in writing, the following documents:

- (1) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:
  - (A) Citing facts alleging jurisdiction of the Tribal Court;
  - (B) Naming as defendants the mortgagors and any other lienholders of which the complainant has record notice (except the Nation with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage);
  - (C) Describing the leasehold estate subject to the leasehold mortgage;
  - (D) Stating the facts concerning (1) the execution of the lease and the leasehold mortgage; (2) the record of the leasehold mortgage; and (3) the facts upon which he or she seeks to recover;
  - (E) Stating any claim for damages or compensation due from the persons to be evicted; and
  - (F) Otherwise satisfying the requirements of the Tribal Court.
- (2) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 days nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

(d) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the methods set forth in subsection (e).

(e) Procedures for Service of Notice. Notices required or authorized in the subsection (d) shall be given in writing either by:

- (1) delivering a copy personally to the borrower/mortgagor or to any other occupant under color of law, or to any adult residing on the leasehold estate and, if applicable, to any sublessee; or
- (2) posting said notice in a conspicuous place near the entrance to said leasehold estate, and sending an additional copy to the lessee or to any other occupant under color of law, and, if applicable to the sublessee, by certified mail, return receipt requested, properly addressed, postage paid.

(f) Proof of Service. Proof of service may be made by affidavit of any adult person stating that he has complied with the requirements of one of the above methods of service.

(g) Power of the Tribal Court.

- (1) The Tribal Court shall enter an order of repossession if:
  - (A) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and
  - (B) The Tribal Court shall find during pre-trial proceedings or at trial that the lessee, sublessee, or other occupant under color of law of the leasehold estate subject to the leasehold mortgage is guilty of an act of unlawful detainer.
- (2) Upon Issuance of an order of repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (i) back rent, unpaid utilities, and any charges due the Nation, Housing Authority of the Seminole Nation, other Public Housing Authority or sublessor under and sublease or other written agreement (except for a leasehold mortgage); (ii) any and all amounts secured by the leasehold mortgage that are due the lender (or Federal Agency); and (iii) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

(h) Enforcement. Upon issuance of an order of repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied leasehold estate. In all cases involving the lender or Federal Agency, the order of repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to § 508(i), and



provided that no party exercised the right to cure a default or right of first refusal as described in §§ 506 and 507.

(i) Continuances in Cases Involving the Lender or Federal Agency Which Originally Made, Insured or Guaranteed the Mortgage Loan. Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the order of repossession be enforced not later than 45 days after a pretrial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by Ordinance TO 2014-08, October 18, 2014; section and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 509. No Merger of Estates**

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the tribal court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 510. Certified Mailing to the Nation**

Any foreclosure proceedings on a lease or leasehold mortgage where the Nation is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the Nation, this notice will also be mailed to the lessor at the same time the notice is mailed to the Nation. If the location of the lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor(s) in care of the superintendent of the applicable agency of the Bureau of Indian Affairs.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by Ordinance TO 2014-08, October 18, 2014; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 511. Intervention**

The Nation or any lessor may petition the Tribal Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this Chapter. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by Ordinance TO 2014-08, October 18, 2014; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 512. Appeals**

Appeals under this Chapter shall be handled in accordance with the general tribal appellate provisions.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; amended by Ordinance TO 2014-08, October 18, 2014; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 513. Conflict with Other Laws**

This Chapter shall preempt any other chapter, section, law, code, ordinance, and/or resolution of the Nation that conflicts with this Chapter.

[HISTORY: Enacted by TO 2014-08, October 18, 2014; section numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER SIX MISCELLANEOUS PROVISIONS**

### **Section 601. Effective Date**

This Ordinance shall take effect on March 4, 2002.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme  
modified on August 26, 2016 pursuant to authority granted by SNC Title 21, §  
203.]

### **Section 602. Retroactive Effect**

This Ordinance shall apply to all rental agreements subject to the provisions of the Ordinance, no matter when entered.

[HISTORY: Enacted by TO 2003-11, March 4, 2003; section numbering scheme  
modified on August 26, 2016 pursuant to authority granted by SNC Title 21, §  
203.]

**CHAPTER SEVEN**  
**[RESERVED]**

**CHAPTER EIGHT**  
**[RESERVED]**

## **CHAPTER NINE**

### **GROUP DWELLING COVERAGE BENEFIT PROGRAM AND REGULATION ACT**

#### **Section 901. Short Title**

This Act may be cited as the Seminole Nation Group Dwelling Coverage Benefit Program and Regulation Act (“Act”).

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 902. Findings**

The Seminole Nation General Council finds that:

- (a) Access to decent, safe and affordable housing is a key component in furthering the health and welfare of its citizens;
- (b) The Nation has created a variety of housing programs to achieve that objective, and participates in a number of federal programs that have the same objective;
- (c) The Nation’s housing objectives cannot be achieved without the availability of adequate and affordable insurance coverage for housing occupied by its citizens;
- (d) Adequate insurance coverage is generally prohibitively expensive for many citizens of the Nation;
- (e) The purchase of dwelling coverage on a group basis or the creation of a self- insured housing risk pool administered by the Nation enables the Nation to make dwelling coverage available to all of its citizens within the Nation’s service area and is the only practical way of fulfilling the need for adequate and affordable dwelling coverage; and
- (f) It is necessary to establish a regulatory scheme that will assure the operation of the Group Dwelling Coverage Benefit Program for the benefit of its citizens.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 903. Purpose; Scope**

The purposes of this Act are to provide for the citizens of the Nation adequate and affordable group dwelling coverage and to regulate the providers of group dwelling coverage.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 904. Definitions**

Whenever used or referred to in this Act, the term:

(a) “Group Dwelling Coverage” means property and liability coverage made available to tribal members covering their dwellings and personal contents under a group policy between the tribal member, the Housing Authority and provider.

(b) “Provider” means a person or entity, including the Seminole Nation, which provides group dwelling coverage.

(c) “Nation” means the Seminole Nation of Oklahoma.

(d) “Nation’s Service Area” means the Nation’s formula area as defined by 24 C.F.R. § 100.302, Indian country as defined by 28 U.S.C. § 1151, and/or any other geographical area within which the Nation provides housing-related services to citizens of the Nation.

(e) “Citizens” means enrolled citizens of the Seminole Nation of Oklahoma.

(f) “Housing Authority” means the Housing Authority of the Seminole Nation of Oklahoma.

(g) “General Council” means the Seminole Nation General Council of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 905. Group Dwelling Coverage Benefit Authorization**

The Housing Authority is hereby authorized to provide, directly or through a provider group, dwelling coverage for citizens within the Nation’s service area, to enter into agreements with a provider, and to take such actions as may be necessary to make group dwelling coverage available to citizens within the Nation’s service area.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 906. Eligibility**

To participate in the Group Dwelling Coverage Benefit Program, the participant must be a citizen of the Nation and the dwelling to be covered must be located within the Nation’s service area. The Housing Authority may establish other reasonable requirements for participation in the Group Dwelling Protection Benefit Program.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

### **Section 907. Payment of Contributions and Premiums**

(a) The Housing Authority or the Nation or both may pay all or part of the contributions or premiums for the Group Dwelling Coverage Benefit Program for citizens of the Nation, provided that such amounts shall be subject to repayment by the policyholders.

(b) All contributions or premiums paid by citizens of the Nation for group dwelling coverage shall be collected and deposited by the Housing Authority to the credit of the citizens of the Nation participating in the program.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 908. Annual Report**

The Housing Authority shall, within sixty (60) days after the end of each calendar year, forward to the provider and a designated representative of the Nation an evaluation of the Group Dwelling Coverage Benefit Program's effectiveness in meeting the objectives of this Act and a description of any instances of non-compliance with the provisions of this Act.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

### **Section 909. Licensing Requirement**

Subsequent to the effective date of this Act, no person or entity shall provide group dwelling coverage to the Housing Authority or the Nation for the benefit of citizens of the Nation unless permitted to do so by the terms of a license issued by the Seminole Nation of Oklahoma, provided that this Section shall not be construed to impair the validity or effectiveness of any existing insurance plan, benefit or coverage for which the Housing Authority is a beneficiary.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

### **Section 910. Application for License**

(a) The Nation may require financial data and other relevant information from a provider that must accompany an application to provide group dwelling coverage. The Nation or Housing Authority may also require additional information about the competency and fitness of all persons directly or indirectly associated with the provider, the financial condition of the provider and the provider's ability to provide group dwelling coverage in a manner consistent with the interests and needs of the Nation and its Citizens.

(b) The Nation may require an application fee that shall not exceed one hundred dollars (\$100.00) plus the actual costs of processing the application.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



### **Section 911. Filing of Policy Forms and Related Documents**

A copy of all agreements, policies and forms relating to group dwelling coverage shall be filed with the Nation and the Housing Authority not less than thirty (30) days before implementation. The copy on file with the Nation or Housing Authority shall be open to inspection by all citizens.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

### **Section 912. Filing of Financial Statements and Activities Report**

(a) No later than June 30th for the year ended the preceding December 31st, provider shall file the following information with the Nation:

- (1) An annual audit by an independent certified public accountant;
- (2) An opinion of a qualified actuary relating to its loss and adjustment expense reserve; and
- (3) An activities summary setting forth the number of dwellings covered, premiums collected, claims received, claims paid and a description of claims disputes resolved and outstanding.

(b) The annual audited financial statement shall be prepared in accordance with generally accepted accounting practices and shall include:

- (1) Report of an independent certified public accountant;
- (2) Balance sheet reporting assets, liabilities, capital and surplus;
- (3) Statement of operations;
- (4) Statement of cash flows;
- (5) Statement of changes in capital and surplus; and
- (6) Notes to financial statements.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 913. Misrepresentations Prohibited**

Provider shall not, directly or through agents, make any misrepresentations with respect to the benefits, advantages, conditions and terms of group dwelling coverage or in connection with the settlement of claims.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 914. Claims Handling**

Provider shall file a copy of its proposed procedures for handling claims with the Housing Authority. Such procedures shall not be effective until approved by majority vote of the Board of Commissioners of the Housing Authority and shall include specific timeframes for responding to, investigating and settling claims as well as an appeal mechanism for denied claims. Any proposed amendments to the claims handling procedures shall be filed with the Housing Authority and shall not be effective until approved by majority vote of the Board of Commissioners of the Housing Authority. Provider shall process and settle all claims in accordance with the approved claims handling procedures on file with the Housing Authority. Copies of all approved procedures and amendments thereto shall be provided to the Secretary of the General Council not later than thirty (30) days after their effective date.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 915. Complaints**

Provider shall maintain a log of all complaints, both verbal and written, received from citizens of the Nation and shall promptly respond to all such complaints. The log shall indicate the response made by the provider and any action taken with respect to the complaint. Copies of the complaint log shall be sent to the Housing Authority within thirty (30) days after the end of each quarter.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 916. Penalties**

A provider who violates any provision of this Act shall be fined not more than one thousand dollars (\$1,000.00) per occurrence. The Housing Authority is authorized to impose monetary penalties and to seek injunctive relief in connection with any such violation. If a provider commits repeated violations of the provisions of this Act that indicate a general practice of engaging in such conduct, the Housing Authority may, after notice and hearing and upon issuance of an order, revoke its license.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

#### **Section 917. Regulations**

The Housing Authority shall promulgate such regulations as are required for the proper implementation of the Act. No regulation shall be of any force or effect until and unless a certified copy signed by the Housing Authority is filed for recording in the office of the Secretary of the General Council and the Tribal Court.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

**Section 918. Applicable Law; Duty of Good Faith**

The Seminole Nation Code shall be applicable to group dwelling coverage and the activities of the provider. Provider shall have a duty to operate in good faith in the processing and disposition of insurance claims.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

**Section 919. Service of Process**

Provider is deemed to have designated the Housing Authority as its agent for the service of process. Provider shall provide the Housing Authority with the name and address of a designated contact to whom notices or other communications from the Housing Authority may be forwarded.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

**Section 920. Consent to Jurisdiction**

Provider is deemed to have consented to the civil jurisdiction of the Tribal Court with respect to all activities conducted pursuant to this Act.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

**Section 921. Judicial Review**

Any decision or action of the Housing Authority imposing a monetary penalty or revoking a license shall be subject to judicial review in the Tribal Court.

[HISTORY: Enacted by TO 2009-12, September 5, 2009; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

**Section 922. Sovereign Immunity**

This Act shall not be construed as a waiver of the Nation's governmental powers and immunities, including but not limited to its sovereign immunity from suit.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

**Section 923. Severability**

If any provision of this Act or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

**Section 924. Effective Date**

This Act shall become effective thirty (30) days after proper approval and execution in accordance with the requirements of the Seminole Nation.

[HISTORY: Enacted by TO 2009-12, September 5, 2009.]

# TITLE 18A

## JUDGMENT FUND PROGRAMS

### INDEX

<b>TITLE 18A JUDGMENT FUND PROGRAMS INDEX .....</b>	<b>i</b>
<b>TITLE 18A JUDGMENT FUND PROGRAMS .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL; JUDGMENT FUND PROGRAMS COORDINATOR; APPEALS; USAGE PLAN .....</b>	<b>1</b>
Section 101.    Definitions.....	1
Section 102.    Judgment Fund Committee Duties .....	2
Section 103.    Judgment Fund Committee Membership; Selection; Term; Meetings; and Removal.....	2
Section 104.    Establishment of Judgment Fund Programs; Purpose .....	2
Section 105.    Judgment Fund Programs Coordinator .....	2
Section 106.    Responsibilities .....	2
Section 106-A.  Program Benefits Overpayments.....	3
Section 107.    Appeal of Decisions Denying Judgment Fund Program Benefits on Grounds that Applicant is Not a Member of the Nation.....	4
Section 108.    Appeal of Decisions Denying Judgment Fund Program Benefits on Grounds Other Than Finding That Applicant Is Not a Member of the Nation .....	5
Section 109.    Plan for the Use and Distribution of Judgment Funds.....	6
Section 110.    Priorities.....	8
Section 111.    Judgment Fund Appeals Board .....	9
<b>CHAPTER TWO BURIAL ASSISTANCE PROGRAM .....</b>	<b>10</b>
Section 201.    Findings .....	10
Section 202.    Guidelines .....	10
Section 203.    Effective Date; Program Year .....	12
Section 204.    Appropriation of Funds.....	13
<b>CHAPTER THREE SCHOOL CLOTHING PROGRAM.....</b>	<b>14</b>
Section 301.    Findings .....	14
Section 302.    Guidelines .....	14
Section 303.    Effective Date; Program Year .....	15
Section 304.    Appropriation of Funds.....	15
<b>CHAPTER FOUR ELDERLY ASSISTANCE PROGRAM .....</b>	<b>17</b>
Section 401.    Title.....	17

Section 402.	Findings .....	17
Section 403.	Effective Date; Program Years.....	17
Section 404.	Duration of Program.....	18
Section 405.	Eligibility .....	18
Section 406.	Amount of Assistance .....	19
Section 407.	Appropriation of Funds.....	19
Section 408.	Codification.....	19
<b>CHAPTER FIVE HIGHER EDUCATION AND VOCATIONAL TRAINING</b>		
<b>SCHOLARSHIP ACT.....</b>		<b>20</b>
Section 501.	Title.....	20
Section 502.	Findings .....	20
Section 502-A.	Definitions.....	20
Section 503.	General Eligibility Requirements .....	23
Section 503-A.	Special Eligibility Requirements for Vocational Training Scholarship Program; Award Amounts .....	24
Section 503-B.	Special Eligibility Requirements for the Undergraduate Degree Scholarship Program; Award Amounts .....	24
Section 503-C.	Special Eligibility Requirements for the Advanced Degree Scholarship Program; Award Amounts .....	25
Section 503-D.	Special Eligibility Requirements for the Required Post-Advanced Degree Continuing Education Scholarship Program; Award Amounts .....	26
Section 504.	Tribal Incentive Scholarship .....	26
Section 505.	Effective Date; Program Year .....	26
Section 506.	Release of Scholarship Money.....	26
Section 507.	Appropriation of Funds.....	26
Section 508.	Duration of Program.....	27
Section 509.	Codification.....	27
<b>CHAPTER SIX COMMUNITY CULTURAL AND RECREATIONAL</b>		
<b>ENHANCEMENT ASSISTANCE PROGRAM.....</b>		<b>28</b>
Sections 601 - 611. REPEALED.....		28
<b>CHAPTER SEVEN HOUSEHOLD ECONOMIC ASSISTANCE PROGRAM .....</b>		<b>29</b>
Section 701.	Title.....	29
Section 702.	Findings .....	29
Section 703.	Effective Date; Program Years.....	29
Section 704.	Eligibility .....	30
Section 704-A.	Assistance Awards.....	31

Section 705.	Appropriation of Funds.....	31
Section 706.	Codification.....	31
<b>CHAPTER EIGHT SEMINOLE NATION ECONOMIC, BUSINESS AND COMMUNITY DEVELOPMENT PROGRAM.....</b>		<b>32</b>
Section 801.	Title.....	32
Section 802.	Findings .....	32
Section 803.	Purpose; Funding Uses .....	32
Section 804.	Application for Funding.....	33
Section 805.	Appropriation of Funds.....	33
Section 806.	Effective Date; Program Year; Duration of Program .....	34
Section 807.	Annual Audits .....	34
Section 808.	Codification.....	34

# **TITLE 18A JUDGMENT FUND PROGRAMS**

## **CHAPTER ONE GENERAL; JUDGMENT FUND PROGRAMS COORDINATOR; APPEALS; USAGE PLAN**

### **Section 101. Definitions**

As used in Title 18A the following terms shall be defined as follows:

(a) Applicant. "Applicant" means a person who submits an application for Judgment Fund Program benefits on his behalf or on behalf of a potential beneficiary of said benefits.

(b) Chief. "Chief" means the Principal Chief of the Seminole Nation.

(c) Committee. Repealed.

(d) Coordinator. "Coordinator" means the coordinator of Judgment Fund Programs.

(e) General Council. "General Council" means the General Council of the Seminole Nation.

(f) Potential Beneficiary. "Potential Beneficiary" means a person who may be eligible to receive the benefits of a Judgment Fund Program, but who is not necessarily the applicant for said benefits, such as decedents for whom burial assistance is sought and minors whose parents are seeking school clothing assistance.

(g) Judgment Funds or Trust Funds. "Judgment Funds" or "Trust Funds" means funds awarded to the Seminole Nation of Oklahoma in Indian Claims Commission or Court of Claims suits against the United States, and income from said funds, which are held in trust by the United States on behalf of the Seminole Nation of Oklahoma.

(h) Per Capita Payments. "Per Capita Payments" shall mean individualization of the judgment funds in the form of equal shares to tribal members, by distribution of investment income from not more than twenty percentum of the judgment funds in equal payments to all members of the Seminole Nation of Oklahoma born on or before and living on January 23, 1990, including minors, as established by a membership roll certified by the Secretary of Interior pursuant to Section 4(b) of the Act of January 23, 1990, Public Law 90-277.

(i) Programs and Services. "Programs and Services" shall mean the use of judgment funds by the Seminole Nation as a governmental entity for tribal social and economic development projects in a manner consistent with the judgment fund plan and priorities set forth in §§ 109 and 110 herein.

[HISTORY: Enacted by TO 92-11, September 5, 1992; amended by TO 92-16, December 5, 1992; amended by TO 93-21, November 6, 1993.]



**Section 102. Judgment Fund Committee Duties**

Repealed.

[HISTORY: Enacted by TO 79-3, October 26, 1979; amended by TO 80-5, June 7, 1980; codified in title 18A as §§ 101 and 107 by TO 91-12, November 16, 1991; amended and re-codified by TO 92-11, September 5, 1992; amended by TO 93-10, March 6, 1993; amended by TO 93-19, June 5, 1993; repealed by TO 93-21, November 6, 1993.]

**Section 103. Judgment Fund Committee Membership; Selection; Term; Meetings; and Removal**

Repealed.

[HISTORY: Enacted by TO 79-3, October 26, 1979; amended by TO 80-5, June 7, 1980; codified in title 18A as §§ 102, 104, 105, 106 and 108 by TO 91-12, November 16, 1991; amended and re-codified by TO 92-11, September 5, 1992; repealed by TO 93-21, November 6, 1993.]

**Section 104. Establishment of Judgment Fund Programs; Purpose**

Judgment Fund Programs of the Seminole Nation of Oklahoma are hereby established. The purpose of the Judgment Fund Programs shall be to provide judgment fund program benefits established by Title 18A to eligible members of the Seminole Nation, pursuant to all applicable laws of the Seminole Nation, all applicable tribal and Secretarial plans, all applicable federal laws, and all applicable federal regulations governing Seminole Nation judgment funds.

[HISTORY: Enacted by TO 92-11, September 5, 1992; amended by TO 93-21, November 6, 1993.]

**Section 105. Judgment Fund Programs Coordinator**

The Judgment Fund Programs shall be administered by a Coordinator. The Coordinator shall be selected pursuant to applicable personnel policies of the Nation. The Coordinator shall be an employee of the Nation, shall be subject to the personnel policies of the Seminole Nation and shall serve under the immediate supervision of the Executive Office.

[HISTORY: Enacted by TO 92-11, September 5, 1992; amended by TO 93-21, November 6, 1993.]

**Section 106. Responsibilities**

The Judgment Funds Program Coordinator shall be responsible for the performance of the following functions:

- (a) Overall program administration, including oversight and direction of all program operations.

(b) Hire, direct and supervise staff consistent with the personnel policies of the Seminole Nation and consistent with the annual operating budget for Judgment Fund Programs approved by the General Council of the Seminole Nation.

(c) Provide fiscal oversight of judgment funds appropriated and budgeted for program operations and distribution of program benefits, including the following fiscal duties:

- (1) Monitor on a day-to-day basis distribution of judgment funds for program use authorized pursuant to Title 18A, including oversight over the Judgment Fund Programs bookkeeper;
- (2) Approve all expenditures pursuant to the operating budget approved by the General Council;
- (3) Negotiate with vendors and providers of services funded by programs established pursuant to Title 18A, including funeral directors and stores selling school clothing, in order to ensure the most economic use of program funds, and provide any proposed agreements with said vendors or services providers to the General Council for approval; and
- (4) Prepare an annual operating budget for submission to the Finance Committee and Trust Fund Management Board for their review and recommendations prior to submission to the General Council for approval.

[HISTORY: Enacted by TO 92-11, September 5, 1992; amended by TO 93-21, November 6, 1993.]

**Section 106-A. Program Benefits Overpayments**

Overpayment of the following types of program benefits due to fraud or mistake, including clerical or computer error, shall be handled as follows:

(a) School Clothing Programs Overpayment and Misuse of Funds. The parent or guardian of the child who received a School Clothing Program overpayment or misused the funds will be given an opportunity to repay the funds directly to the School Clothing Program, provided, that if the parent or guardian fails to repay the debt by the end of the School Clothing Program year in which the debt was incurred, the debt will be offset against the child's school clothing benefit for the next school clothing program year.

(b) Household and Economic Assistance Program, Elderly Assistance Program, Higher Education Program and Clothing Program Overpayments. Any person who received a Household and Economic Assistance Program overpayment, an Elderly Assistance Program overpayment, a Higher Education Program overpayment or a Clothing Assistance Program overpayment or misused of funds (which has not been offset) shall be given an opportunity to repay the funds directly to the appropriate program, provided that if such funds are not repaid, then the amount of the overpayment shall be offset against any subsequent Judgment Fund Program benefits sought and for which the person might have otherwise been eligible, including benefits from any one or more of the following programs: Household and Economic Assistance

Program, Elderly Assistance Program, Higher Education Assistance Program, Clothing Assistance Program or Burial Assistance Program.

(c) Time Limit for Remedy; Program Overpayments that Cannot Be Offset. Any program benefit overpayment discovered will be offset against any subsequent Judgment Fund Program benefits sought and for which the person might have otherwise been eligible. Any program benefit overpayment made to a person that cannot be offset against a subsequent Judgment Fund Program benefit, such as an overpayment from the Burial Assistance Program, shall be written off in the audit year in which it is determined that no offset is possible.

(d) Prosecution for Fraud. Any suspected intentional misrepresentation of fact or other fraudulent actions by an applicant resulting in an overpayment may be reported to the Nation's Prosecutor, for criminal prosecution.

[HISTORY: Enacted by TO 94-11, September 3, 1994; Note: Section 5 of TO 94-11 provides that it shall be retroactive to apply to any overpayments made since January 1, 1993; amended by TO 99-05, December 4, 1999.]

**Section 107. Appeal of Decisions Denying Judgment Fund Program Benefits on Grounds that Applicant is Not a Member of the Nation**

If an applicant for program services is denied eligibility because records of the Seminole Nation Enrollment Office establish that the potential beneficiary of the application is not a tribal member, the Judgment Fund Coordinator shall notify the applicant in writing that the application has been denied based on the lack of tribal membership of the potential beneficiary, that the applicant may have certain appeal rights as set forth in Title 18A of the Code of Laws of the Seminole Nation, §§ 107 and 108, and that a copy of said law is posted in the program office and shall be provided to the applicant upon request. As to the specific circumstances described below, the following provisions apply:

(a) Where a Judgment Fund program application has been denied based on lack of membership of a living potential beneficiary who has never submitted an application for membership or who has not received a final decision of a pending application, the applicant has the right to submit an application for membership to the Enrollment Office, or determine status of the pending application in the Enrollment Office, and if necessary, submit any additional information or documents necessary for completion of processing of the membership application. The potential beneficiary must obtain a final determination of membership from the Enrollment Office before the Judgment Fund Program application will be processed further, provided that a determination of tribal membership eligibility shall not retroactively entitle the potential beneficiary to any Judgment Fund Program benefits available or sought by the applicant prior to acquisition of tribal membership status.

(b) Where a Judgment Fund Burial Assistance Program application has been denied based on lack of membership of a deceased potential beneficiary who was not a member of any other Indian nation, the applicant shall submit a membership application on behalf of the decedent or determine the status of any pending application in the Enrollment Office, and if necessary, submit any additional information or documents necessary for completion of

processing of the membership application. A final determination of membership eligibility from the Enrollment Office must be obtained before the Judgment Fund Program application will be processed further.

(c) Where a Judgment Fund Program application has been denied based on lack of membership of a potential beneficiary who has received a final denial of membership eligibility pursuant to Title 22 (Membership) of the Code of Laws of the Seminole Nation, the decision of the Judgment Fund Programs Coordinator denying Judgment Fund Program benefits based on such a decision shall be final and not subject to appeal, provided that should tribal membership of the potential beneficiary be established at some later date, nothing herein shall be construed as preventing an applicant for applying for Judgment Fund Program benefits arising in the Judgment Fund Program year in which the new application is submitted.

[HISTORY: Enacted by TO 92-11, September 5, 1992; amended by TO 93-21, November 6, 1993; amended by TO 93-22, November 6, 1993.]

**Section 108. Appeal of Decisions Denying Judgment Fund Program Benefits on Grounds Other Than Finding That Applicant Is Not a Member of the Nation**

(a) Notice of Denial of Eligibility and Notice of Appeal Rights. If an applicant for program services is denied eligibility on grounds other than tribal membership of the potential Judgment Fund Program beneficiary and/or if he is determined to have received a program benefit overpayment as described in Section 106-A herein requiring an offset against a subsequent program benefit as authorized by Section 106-A herein, the Judgment Fund Coordinator shall notify the applicant in writing of the application denial or determination of overpayment requiring an offset against a subsequent program benefit. Said notice shall state the grounds for the decision, and a statement of the applicant's rights to appeal the decision to the Administrative Appeals Board as set forth in Section 108 herein. The notice regarding appeal rights shall be mailed in a manner consistent with Section 710 of Title 16 of the Code of Laws of the Seminole Nation, provided that if an appealable decision is personally served on the person affected, the notice of appeal rights shall be attached to the decision, in which case mailing of the notice shall not be required.

(b) Appeals to Administrative Appeals Board. All appeals of Judgment Fund Programs actions authorized pursuant to Section 108(a) shall be conducted by the Administrative Appeals Board of the Seminole Nation pursuant to Title 16, Chapter Seven of the Code of Laws of the Seminole Nation.

(c) Appeal to Administrative Appeals Board. An applicant who wishes to contest a denial of an application for Judgment Fund Program benefits or a determination of program benefit overpayment requiring an offset against a subsequent program benefit pursuant to Section 108(a) may file a written appeal to the Administrative Appeals Board, said appeal to be filed with the Judgment Fund Coordinator within thirty (30) days of the date of the Coordinator's decision. If the thirtieth day should fall on a holiday or on a weekend, the appeal must be received no later than the day immediately following the holiday or weekend. The appeal shall be date-stamped at time of receipt by the Judgment Fund Program Coordinator, who shall provide a copy to the applicant. The appeal may be simply stated, but shall specify the particular

ground(s) upon which it is based and the action or relief requested. It shall be signed by the person appealing. The Coordinator shall promptly notify a designated person in the Executive Office that an appeal has been filed, and the designated person shall be responsible for contacting the Appeals Board Chairman and securing a hearing date from him.

(d) Finality of Decision. If the applicant does not file a timely appeal, then he waives his right to a hearing before the Administrative Appeals Board, and the Coordinator's decision will become final. If the applicant files an appeal, the decision made by the Administrative Appeals Board shall be final. A determination of program overpayment requiring an offset against a subsequent program benefit or a finding of ineligibility with regard to one Judgment Fund Program that is based upon an eligibility factor which would affect program eligibility for any other Judgment Fund program shall be deemed conclusive, and denial of such other program benefits based on such factor shall be unappealable.

[HISTORY: Enacted by TO 92-11, September 5, 1992; amended by TO 93-10, March 6, 1993; amended by TO 93-21, November 6, 1993 amended by TO 93-22, November 6, 1993; amended by TO 94-11, September 3, 1994.]

NOTE: LAW 93-22 BECAME EFFECTIVE ON NOVEMBER 6, 1993, WITH THE FOLLOWING PROVISIONS: (1) THAT IT WOULD NOT AFFECT THE FINALITY OF ANY DECISION WHICH BECAME A FINAL DECISION PURSUANT TO LAW IN EFFECT PRIOR TO ITS PASSAGE; (2) THAT ANY PERSON WHO RECEIVED AN APPEALABLE DECISION PRIOR TO DATE OF ITS PASSAGE IS ENTITLED TO A NEW NOTICE OF APPEAL RIGHTS PROVIDING SUCH PERSON WITH THIRTY DAYS FROM DATE OF RECEIPT OF THE NOTICE TO APPEAL THE DECISION; (3) THAT THE ADMINISTRATIVE APPEALS BOARD WILL HEAR THE APPEAL OF ANY PERSON WHO HAS AN APPEAL PENDING BEFORE THE JUDGMENT FUND APPEALS BOARD OR THE MEMBERSHIP APPEALS BOARD AS OF NOVEMBER 6, 1993.

### **Section 109. Plan for the Use and Distribution of Judgment Funds**

The Seminole Nation of Oklahoma's share (75.404%) of funds appropriated June 1, 1976, in satisfaction of the award granted the Seminole Nation in consolidated Dockets 73 and 151 before the Indian Claims Commission, less attorney fees and litigation expenses, and including all interest and investment income accrued shall be used and distributed pursuant to the following plan adopted by the General Council of the Seminole Nation of Oklahoma on September 12, 1990, approved by the United States Congress pursuant to Sections 3 and 4 of the Act of January 23, 1990, Public Law 90-277.

(a) Annual Program Budget.

(1) One hundred percent (100%) of funds shall be invested by the Secretary of the Interior for the Seminole Nation of Oklahoma. The principal, interest and investment income accrued shall be available for use by the tribal governing body on an annual budgetary basis for programs and services

established in accordance with priorities determined by the tribal governing body in program areas which may include, but are not limited to: health; education; social services; elderly; housing; general community improvement; economic and business development; expansion and preservation of the tribal land base; and tribal government support and development. Any budget which would cause the available principal to fall below \$35,000,000 must be approved by at least two-thirds of the qualified voters of the tribe voting on the budget referendum in a general or special election.

- (2) Balanced Budget Requirement. Beginning on October 1, 2013 (FY 2014), all budgets of the Seminole Nation Judgment Fund Special Programs shall have balanced budgets based on the current estimated annual income from the Statement of Account provided by the Office of Special Trustees, Department of the Interior for Accounting 5697 Seminole Nation of Oklahoma Docket 73 & 151-9145.

(b) Investment Plan; General. If in the future the Seminole Nation of Oklahoma desires to undertake investment of some portion or all of the funds, the tribal governing body may present an investment plan to the Secretary for approval. Approval shall be granted within sixty (60) calendar days of receipt of the investment plan unless the Secretary determines, in writing, that the plan would not be reasonable or prudent or would otherwise not be in accord with the provision of the Act. Upon approval of the investment plan by the Secretary, funds to be managed under the investment plan are to be transferred to the Seminole Nation of Oklahoma at a mutually agreed time. Neither the United States nor the Secretary shall be liable, because of the Secretary's approval of an investment decision under this plan for any losses in connection with such investment decision.

(c) Investment Plan; Annual Audit. Funds managed under an investment plan will be audited annually. Within ninety (90) calendar days of the end of each fiscal year an audit report shall be distributed to the governing body and interested members of the Seminole Nation of Oklahoma. The report shall include a statement of the fund's performance and information relevant to the management of the funds including but not limited to: financial statements, the amount of interest earned from each investment during the reporting period, and a statement of the investments of the fund with an appraisal at market value.

(d) Administration and Management Fees. All annual expenses associated with the administration and management of the fund shall be paid from the fund income prior to the allocation of funds for programs.

(e) General.

- (1) Bond Collateral. Nothing in this plan shall preclude the tribal governing body from using a portion of the principal as collateral for bond obligations issued by the Seminole Nation.

- (2) Income Taxes. None of the funds made available under this plan for programming shall be subject to Federal or State income taxes nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or Federal or federally assisted programs.

[HISTORY: Enacted by Law 92-16, December 5, 1993; amended by TO 2013-08, June 1, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 110. Priorities**

The General Council of the Seminole Nation expressly recognizes that the judgment fund is tribal property which is not subject to any individual claim or interest by any individual tribal member. The General Council recognizes that, pursuant to the judgment fund plan contained in § 109, it has an obligation to establish distribution priorities, and accordingly establishes the following priorities, in order to simultaneously provide beneficial judgment fund programs and services for the welfare of the Nation as a whole, preserve the judgment fund principal, and ensure the availability of sufficient funds to continue existing and future judgment fund programs:

(a) Program and Service Area Priorities. The following program and service areas shall be given priority for purposes of the protection of ongoing programs and the establishment of future programs: health, education, social services, elderly, burial, housing, general family assistance and community improvement, economic and business development, expansion and preservation of the tribal land base, and tribal government support and development.

(b) Reserved.

(c) Per Capita Payments. The General Council of the Seminole Nation recognizes that the judgment fund distribution plan contained in § 109 contains no provisions for per capita payments, and therefore it is the policy of the Seminole Nation that:

- (1) No per capita payments of judgment funds shall be made unless the judgment fund plan is amended and approved by the United States Congress;
- (2) Unless and until the judgment fund plan is amended to allow per capita payments and such amendment is approved by Congress, the Seminole Nation will not request certification of a membership roll of members of the Seminole Nation of Oklahoma born on or before and living on January 23, 1990, including minors, by the Secretary of Interior pursuant to Section 4(b) of the Act of January 23, 1990, Public Law 90-277, since federal involvement in identification of individuals benefiting from judgment funds is limited to per capita payment distribution.

[HISTORY: Enacted by TO 92-16, December 5, 1993.]

**Section 111. Judgment Fund Appeals Board**

Repealed.

[HISTORY: Enacted by TO 93-10, March 6, 1993; repealed by TO 93-21,  
November 6, 1993.]



## **CHAPTER TWO**

### **BURIAL ASSISTANCE PROGRAM**

#### **Section 201. Findings**

The Seminole Nation finds that many Seminole Tribal members are not in a financial position to meet the rising costs of funeral expenses and there is a definite need for burial assistance.

[HISTORY: Enacted by TO 91-4, July 27, 1991; codified by TO 91-12,  
November 16, 1991.]

#### **Section 202. Guidelines**

The General Council hereby directs that a Burial Assistance Program be established with the following guidelines:

(a) **Eligibility Requirements.** In order to be eligible for burial assistance benefits the deceased must be an enrolled member of the Seminole Nation of Oklahoma who has been determined to have descended from a member of the Seminole Nation as it existed in Florida on September 18, 1823, provided that a deceased who is not enrolled but who meets all of the other above requirements shall be eligible under the following circumstances:

- (1) If the deceased is a stillborn or a child under the age of one year old; and if at least one parent is an enrolled member of the Seminole Nation of Oklahoma who has been determined to have descended from a member of the Seminole Nation as it existed in Florida on September 18, 1823; and if the Enrollment Office certifies in writing that the deceased was eligible for enrollment; or
- (2) If the Enrollment Office certifies in writing that on or before the date of death the deceased had a completed enrollment application containing all required information pending in that office and certifies in writing that the deceased was eligible for enrollment.

(b) **Definitions.**

- (1) **Burial Expenses.** The term “burial expenses” shall include the following: cremation expenses; funeral home charges, including but not limited to transportation of the body, cost of casket, flowers, embalming, limousine use, use of chapel; cost of cemetery plot; cost of headstone; and cost of vault.
- (2) **Burial Service Provider.** “Burial service provider” shall include a funeral home or any other person or business that provides services resulting in burial expenses.

(c) **Burial Expense Payee.** The burial expense payee shall be determined as follows:

- (1) Where the deceased is under the age of eighteen years of age, the payee shall be the person who has made legal obligations to pay funeral service providers and who is the custodial parent or other person having legal custody of the child, including a person serving as an Indian custodian pursuant to the Juvenile Code of the Seminole Nation.
- (2) When the deceased is eighteen years of age or older, the payee shall be a person who has made legal obligations with funeral service providers, provided that the Judgment Fund Programs Coordinator shall attempt on a case-by-case basis to give the following persons a priority in serving as grant recipients:
  - (A) Priority One: A person designated by the deceased to be the burial assistance grant recipient on a notarized form provided by the Burial Assistance Program and on file in the Burial Assistance Program;
  - (B) Priority Two: The spouse of the deceased;
  - (C) Priority Three: If the deceased had no spouse or if the deceased's spouse is not living or declines to serve as grant recipient, any child of the deceased eighteen years of age or older who applies for burial assistance.
  - (D) Priority Four: The parent, brother or sister of the deceased who applies for burial assistance and who executes a sworn statement that the deceased was not survived by any children over the age of eighteen years; or
  - (E) Where none of the persons listed in subsection (c)(2)(A)-(D) are living or where such persons are otherwise unavailable to serve as the grant recipient, then any other relative or other interested person who has made legal obligations to pay funeral service providers may serve as payee.

(d) Burial Assistance Benefits Amount. The burial assistance benefits amount shall be as follows:

- (1) Burial assistance benefits shall be in the amount of Three Thousand Dollars (\$3,000) for a deceased who is over the age of one year, unless the deceased was cremated, in which case the grant amount shall be in the amount of the actual costs of the burial expenses, not to exceed (\$3,000).
- (2) Burial assistance benefits shall be in the amount of the actual cost of the burial expenses, not to exceed eight hundred dollars (\$800), for burial of a deceased aged one year or less, including stillborns.

(e) Method of Payment. Benefits checks shall be delivered to the payee, and shall be made payable jointly to the burial service providers and the payee; provided that any remaining balance shall be paid by separate check made payable to the payee alone.

(f) Miscellaneous Expense Grant Amount. In addition to the grant for burial expenses, the responsible family member shall receive a grant of Three Hundred Dollars (\$300) for miscellaneous expenses related to the funeral.

(g) Application Requirements. Payment shall not be made until receipt by the Judgment Fund Burial Assistance Program of the following:

- (1) A copy of an enrollment card of the deceased, or written confirmation of tribal enrollment or written certification regarding enrollment eligibility pursuant to Section 202(a)(2) by the Enrollment Office, and a copy of the Certificate of Degree of Indian Blood (CDIB) card;
- (2) A certified copy of a death certificate or written verification from the funeral home containing the full name of the decedent and the date and place of death;
- (3) A copy of the document executed by the payee or co-payee establishing his legal obligation for the burial expenses; and
- (4) Receipts or itemized statements of burial expenses signed by each burial service provider or his authorized agent and the payee or co-payee for payment of the burial expenses.

(h) Application Deadline. Application must be made within ninety (90) days from the date of death of the deceased.

[HISTORY: Enacted by Enacted by TO 91-4, July 27, 1991; codified by TO 91-12, November 16, 1991; amended by Enacted by TO 91-4A, December 12, 1991; amended by TO 92-2, March 7, 1992; amended by TO No 93-08, March 6, 1993; amended by TO 93-21, November 6, 1993; amended by TO 99-05, December 4, 1999; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 203. Effective Date; Program Year**

Effective January 1, 2005, each program year will be on a fiscal year basis, commencing October 1 and ending September 30 of the following year. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient funds are available in the Burial Assistance Program Fund and provided that the General Council has by resolution approved a budget for such program year.

[HISTORY: Enacted by TO 91-4, July 27, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-7, June 27, 1992; amended by TO 2005-03, March 5, 2005.]

#### **Section 204. Appropriation of Funds**

The General Council hereby authorizes an initial appropriation of Five Hundred Thousand Dollars and no/cents (\$500,000.00) in judgment funds made available under P.L. 101-277 for the burial assistance program. All additional appropriations for this program shall be made by resolution duly approved by the General Council. All funds appropriated for the Burial Assistance Program shall be placed in a separate, interest bearing trust account entitled "Burial assistance Fund." Any interest accruing on Burial Assistance Fund assets shall be incorporated into the fund.

[HISTORY: Enacted by TO 91-4, July 27, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-7, June 27, 1992.]

## **CHAPTER THREE**

### **SCHOOL CLOTHING PROGRAM**

#### **Section 301. Findings**

(a) The Seminole Nation finds that there are many requests for assistance for children's school clothing and there are no programs available to provide such assistance to meet this need for tribal members.

(b) A need exists for a program to provide for school clothing for eligible members.

[HISTORY: Enacted by TO 91-5, July 27, 1991; codified by TO 91-12,  
November 16, 1991.]

#### **Section 302. Guidelines**

The General Council hereby directs that a School Clothing Assistance Program be established with the following guidelines;

- (a) The eligibility requirements shall be:
  - (1) Applicant must be an enrolled member of the Seminole Nation of Oklahoma who has been determined to have descended from a member of the Seminole Nation as it existed in Florida on September 18, 1823, and must provide:
    - (A) Copy of valid Seminole Nation Tribal Card
    - (B) Copy of Certificate of Degree of Indian Blood
  - (2) Applicant must be between the ages of four and nineteen years old and must be pre-enrolled in one of the following schools for an academic year which starts in the year in which assistance is sought or must be enrolled in and attending one of the following schools at the time of application: a certified Head Start Program or a state certified pre-school, or kindergarten through the twelfth (12th) grade.
  - (3) Applicant must present either one of the following: (1) written proof of school pre-enrollment or (2) written proof of school attendance.
    - (A) Public School System. Must have application signed by Superintendent, Principal, or Counselor and documented by school seal.
    - (B) Home School students must submit:
      - (i) The curriculum currently being followed,

(ii) Certificate of Training for the Instructor, and

(iii) School accreditation.

(C) Head Start Programs or Day Care.

(i) Must have application signed by director or teacher, and

(ii) Copy of License if required, or a letter of explanation from facility.

(b) A grant of One Hundred Dollars and no/cents (\$100.00) will be made available to the parent/legal guardian or student in grades pre-kindergarten through twelve (12). The payment will be issued to the parent/legal guardian of student (if student is aged 18 or 19 the payment will be issued to the student).

(c) Participants are eligible to receive one school clothing assistance payment per program school year.

(d) Applications may be submitted only during August and September and for the full school year. All applications must be submitted for the school year in which assistance is sought and cannot be submitted for prior school years.

[HISTORY: Enacted by TO 91-5, July 27, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-03, January 23, 1993; amended by TO 95-01, February 4, 1995; amended by TO 99-05, December 4, 1999; amended by TO 2006-07, August 1, 2006; amended by TO 2007-03, May 10, 2007; amended by TO 2014-02, March 1, 2014; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 303. Effective Date: Program Year**

Effective January 1, 2005, each program year will be on a fiscal year basis, commencing October 1 and ending September 30 of the following year. Effective July 31, 2007, the School Clothing Assistance Program shall be modified as reflected in Section 302. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient funds are available in the School Clothing Assistance Program Fund and provided further that the General Council has by resolution approved a budget for such program year.

[HISTORY: Enacted by TO 91-5, July 27, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-7, June 27, 1992; amended by TO 2005-03, March 5, 2005; amended by TO 2006-07, August 1, 2006.]

### **Section 304. Appropriation of Funds**

The General Council hereby authorizes an initial appropriation of Three Hundred Eighty Thousand Five Hundred Fifty Dollars and no/cents (\$380,550) in Judgment Funds made available under P.L. 101-277 for the school clothing assistance program. All additional

appropriations for this program shall be made by resolution duly approved by the General Council. All funds appropriated for the School Clothing Assistance Program shall be placed in a separate interest-bearing trust account entitled "School Clothing Fund." Any interest accruing on fund assets shall be incorporated into the Fund.

[HISTORY: Enacted by TO 91-5, July 27, 1991; codified by TO 91-12, November 16, 1991; amended by TO 92-7, June 27, 1992.]

## **CHAPTER FOUR**

### **ELDERLY ASSISTANCE PROGRAM**

#### **Section 401. Title**

This act shall be known as the Elderly Assistance Program Act.

[HISTORY: Enacted by TO 91-10, November 16, 1991.]

#### **Section 402. Findings**

The Seminole Nation makes the following findings relating to its elderly Seminole tribal members:

(a) Elderly Seminole tribal members have traditionally taken responsibility for the care of not only their own children and grandchildren, but also the needs of other family members, resulting in financial deprivations to elderly tribal members;

(b) The Seminole Nation is indebted to its elders for the leadership role which they have taken in the betterment of their family members and the Nation as a whole;

(c) Seminole elders, particularly those aged sixty-five and older, and even more particularly those aged seventy-five and older, due to their advanced age, have a much decreased opportunity to enjoy the benefits of the judgment fund programs which will benefit the younger generation and future generations to come, yet have had to wait for such benefits for a much greater length of time;

(d) Elderly Seminole tribal members as a group will significantly benefit from a financial assistance program, in view of their special economic needs arising from a variety of factors, including increases in the cost of living, fixed incomes of the elderly, high medical costs of the elderly, need for specialized care, and decreased employment opportunities for the elderly.

[HISTORY: Enacted by TO 91-10, November 16, 1991.]

#### **Section 403. Effective Date: Program Years**

Effective January 1, 2005, each program year will be on a fiscal year basis, commencing October 1 and ending September 30 of the following year. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient funds are available in the Elderly Assistance Fund and provided further that the General Council has by resolution approved a budget for such program year.

[HISTORY: Enacted by TO 91-10, November 16, 1991; amended by TO 92-7,  
June 27, 1992; amended by TO 2005-03, March 5, 2005.]



#### **Section 404. Duration of Program**

The Seminole Nation shall continue to operate the program from program year to program year provided that sufficient judgment funds are appropriated by resolution of the General Council for such program year.

[HISTORY: Enacted by TO 91-10, November 16, 1991.]

#### **Section 405. Eligibility**

In order to be eligible for benefits pursuant to the Elderly Assistance Program Act, the following requirements must be met:

(a) The applicant shall be an enrolled member of the Seminole Nation of Oklahoma who has been determined to have descended from a member of the Seminole Nation as it existed in Florida on September 18, 1823, and present:

- (1) Valid Seminole Nation Tribal Enrollment Card
- (2) Certificate of Degree of Indian Blood (CDIB)
- (3) Third form of identification (which may include but shall not be limited to one of the following)
  - (A) Social Security Card (signed)
  - (B) Driver's License
  - (C) Birth Certificate and photo

(b) The applicant shall sign an application requesting a grant of financial assistance to acquire goods and services otherwise unavailable to him or to otherwise improve the quality of his life and standard of living, and shall state the nature of his needs on the application, which may include, but shall not be limited to the following: transportation costs; purchase or repair of household appliances; telephone equipment and charges; home furnishings; home repair; entertainment needs; purchase of wheelchairs and other equipment related to physical disability; modifications to living quarters to make them accessible to the handicapped; clothing needs; utility needs; debt reduction; and payment of medical deductibles for Medicare and health insurance.

(c) The applicant shall be at least sixty-two years of age in order to be eligible for assistance under the Elderly Assistance Program, and must present documentation of his birth date prior to payment.

[HISTORY: Enacted by TO 91-10, November 16, 1991; amended by TO 93-01, January 23, 1993; amended by TO 99-05, December 4, 1999; amended by TO 2002-03, March 5, 2002; amended by TO 2003-04, April 17, 2003; amended by

TO 2006-08, August 1, 2006; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 406. Amount of Assistance**

An eligible applicant who has participated in the Household Economic Assistance Program pursuant to Title 18A, §§ 701-706 of the Code of Laws of the Seminole Nation, shall receive a one-time assistance payment in the amount of two-thousand dollars (\$2,000), less the amount of any Elderly Assistance payment received by the applicant pursuant to Seminole Nation of Oklahoma Law No. 91-10 prior to January 1, 1993. An eligible applicant who has not participated in the Household Economic Assistance Program pursuant to Title 18A, §§ 701-706 of the Code of Laws of the Seminole Nation, shall receive a one-time assistance payment in the amount of three-thousand dollars (\$3,000), less the amount of any Elderly Assistance payment received by the applicant pursuant to Seminole Nation of Oklahoma Law No. 91-10 prior to January 1, 1993.

[HISTORY: Enacted by TO 91-10, November 16, 1991; amended by TO 93-01, January 23, 1993.]

**Section 407. Appropriation of Funds**

An initial appropriation of Five Hundred Thousand Dollars (\$500,000.00) from judgment funds awarded to the Seminole Nation in Dockets No. 73 and No. 151 of the Indian Claims Commission, released under Public Law 101-277, shall be appropriated for the Elderly Assistance Program pursuant to a resolution enacted by the General Council. All additional appropriations shall be made by resolution of the General Council. All funds appropriated for the Elderly Assistance Program shall be placed in a separate interest-bearing trust account entitled "Elderly Assistance Fund." All interest accruing from funds in said trust account shall be incorporated into the Fund.

[HISTORY: Enacted by TO 91-10, November 16, 1991; amended by TO 92-7, June 27, 1992.]

**Section 408. Codification**

This law shall be codified as Chapter Four of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 91-10, November 16, 1991.]

## **CHAPTER FIVE HIGHER EDUCATION AND VOCATIONAL TRAINING SCHOLARSHIP ACT**

### **Section 501. Title**

This act shall be known as the Higher Education and Vocational Training Scholarship Act (hereinafter referred to as HEVT Scholarship Act.)

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 93-02,  
January 23, 1993.]

### **Section 502. Findings**

The Seminole Nation finds that Seminole tribal members attending vocational schools and institutes of higher learning are in want of financial assistance to meet the costs of essential needs not met by grants, scholarships, loans, and family contributions. An increasing number of tribal members are attending vocational schools and institutions of higher learning and a need exists to establish a scholarship program to assist in the costs related to such training and education for eligible tribal members.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 93-02,  
January 23, 1993.]

### **Section 502-A. Definitions**

(a) Academic Year. "Academic year" shall be defined as a fall semester of any given year and the immediately following spring semester.

(b) Advanced Degree Program. "Advanced degree program" shall be defined as an educational program offered by an institute of higher learning to persons who have earned a bachelor's degree and are in pursuit of a master's degree, PHD, jurist doctorate degree, medical degree, pharmacist degree, or other similar type of advanced degree.

(c) Certificate of Completion. "Certificate of completion" shall be defined as a certificate issued by a facility offering vocational training stating that a student has successfully completed a course offered by the school.

(d) College. "College" shall be defined as a state or privately funded institution of higher learning located within or without the State of Oklahoma and offering a course of general studies leading to an associate's or a bachelor's degree.

(e) Course Credit. "Course credit" shall be defined as the number of credits or units earned for each undergraduate program or advanced degree program course taken by a student. The determination of a student's course credit shall be made by the institution of higher learning attended by the student, based upon criteria used by said institution.

(f) Full-time Student. A “full-time student” in a vocational training facility shall be defined as a student considered to be a full-time student by the vocational training facility which he is attending. A “full-time student” in an undergraduate degree program or graduate degree program shall be defined as a student enrolled in the minimum number of hours or units of course credit in a semester, trimester or quarter found to constitute full-time enrollment by the institution of higher learning attended by the student, based on criteria used by the institution.

(g) Grade Point Average. “Grade point average” shall be defined as the student’s average of grades received for courses taken during a specified period of time, based upon a point scale which assigns four (4) points to an A, three (3) points to a B, two (2) points to a C, one (1) point to a D and zero (0) points to an F. The determination of a student’s grade point average shall be made by the institution of higher learning attended by the student, based upon criteria used by said institution.

(h) Graduate School. “Graduate school” shall mean a state or privately funded institution of higher learning located within or without the State of Oklahoma and offering an advanced degree program.

(i) Institution of Higher Learning. “Institution of higher learning” shall mean a junior college, college or university, including law schools, medical schools and other advanced degree programs affiliated with a university.

(j) Junior College. “Junior college” shall be defined as a state or privately funded institution of higher learning located within or without the State of Oklahoma and offering a course of general studies leading to an associate’s degree.

(k) Part-time Student. A “part-time student” in a vocational training facility shall be defined as a student enrolled in a vocational training facility but not considered to be a full-time student by the vocational training facility which he is attending. A “part-time student” in an undergraduate degree program or an advanced degree program shall be defined as a student enrolled in at least one hour or unit of course credit in a semester, trimester or quarter, but not enrolled in a sufficient number of hours to be classified as a full-time student. An applicant attending summer school shall not be classified as a part-time student.

(l) Quarter. A “quarter” shall be defined as a period of instruction in a vocational training facility or institution of higher learning lasting approximately 9 weeks, with four quarters per academic year, and offering student enrollment in sufficient hours or units of course credit for classification of a student as a full-time student for the academic year.

(m) Required Post-Graduate Continuing Education. “Required post-graduate continuing education” consists of ongoing educational activities, including short courses and seminars, for: (1) a person who possesses any advanced degree, who is in a teaching profession or other profession requiring an advanced degree, and who is required to engage in continuing education related to his profession by licensing requirements or other similar regulatory requirements related to his profession; or (2) a person who is in pursuit of an additional degree.

(n) Semester. A “semester” shall be defined as a period of instruction in a vocational training facility or institution of higher learning lasting approximately eighteen weeks, classified

as the fall semester or the spring semester for each academic year, and offering student enrollment in a sufficient hours or units of course credit for classification of a student as a full- time student for the academic year.

(o) Student Classification. “Student classification” shall be defined as classification of a student in an undergraduate degree program as a freshman, sophomore, junior or senior, or classification of a student in an advanced degree program as a graduate student, law student, medical student or other student pursuing a specialized advanced degree. Student classification shall be made by the institute of higher learning attended by the student, based upon criteria used by said institution.

(p) Summer School. “Summer school” shall be defined as a period of instruction in a vocational training facility or institution of higher learning lasting approximately four weeks, with one summer school session per academic year, offered to enable students to acquire additional hours or units of course credit beyond those of a full-time student attending during regular school sessions in an academic year. The term “summer school” shall not include the summer quarter of an institution of higher learning which operates on a quarterly basis, but may include any special summer sessions offered by such institution which would enable a student to acquire additional hours or units of course credit beyond those of a full-time student attending during regular school sessions in an academic year.

(q) Trimester. A “trimester” shall be defined as a period of instruction in a vocational training facility or institution of higher learning lasting approximately 12 weeks, with three trimesters per academic year, and offering student enrollment in sufficient hours or units of course credit for classification of a student as a full-time student for the academic year.

(r) Undergraduate Degree Program. “Undergraduate degree program” shall be defined as an educational program offered by an institute of higher learning to a student in pursuit of an associate’s degree or bachelor’s degree or diploma.

(s) University. “University” shall be defined as an institution of higher learning providing facilities for teaching and research, and consisting of an undergraduate division which confers bachelor’s degrees and a graduate division which comprises graduate school and professional schools each of which may confer master’s degrees and doctorates.

(t) Vocational Course. “Vocational Course” shall mean training and instruction in a skill or trade to be pursued or which is being pursued as a career, or training and instruction on specific topics related to community service, or self-improvement, provided that such course also meets one of the following criteria: (1) the course is offered by a university and audited by the student by paying for the class and on-site attendance without seeking a grade, (2) the course is taken by a student on-site at the vocational training facility or other location designated by the facility and will result in the student’s receipt of a certificate of completion, or (3) the course is a correspondence course offered through the mail by a vocational training facility, which will result in the student’s receipt of a certificate of completion. Classification of a course as a vocational course shall not be affected if the course could result in receipt of college credits, if the student has not taken the course for the purpose of earning a college degree. A course is not

a vocational course if it is taken for purposes of obtaining a GED certificate, unless said course is offered concurrently with vocational training.

(u) Vocational License. “Vocational license” shall mean a license, permit or certificate directly related to completed vocational training and which is a prerequisite to the performance of job functions related to said vocational training.

(v) Vocational Training Facility. “Vocational training facility” shall be defined as an accredited private or state funded vocational school or university located within or without the State of Oklahoma, which provides vocational courses as defined in subsection (t) herein.

[HISTORY: Enacted by TO 93-02, January 23, 1993; amended by TO 93-19, June 5, 1993; amended by TO 96-03, June 29, 1996; amended by TO 99-05, December 4, 1999.]

### **Section 503. General Eligibility Requirements**

In addition to special eligibility requirements for each type of education activity funded by the HEVT Scholarship Program, the applicant must meet the following general eligibility requirements in order to receive funding pursuant to the HEVT Scholarship Program:

(a) Class Schedule and Student Classification. The applicant must attach a copy of his current class schedule to the application for confirmation of enrollment, together with documentation from the institution of higher learning attended regarding the number of hours in which he is enrolled, identification of the school session as a semester, trimester, quarter or summer school session, the school or institution’s classification of the student as a full-time or part-time student for the applicable session, and in the case of students pursuing undergraduate degrees, the school or institution’s classification of the student as a freshman, sophomore, junior or senior.

(b) Documentation of Completion of Coursework; Exception. The applicant must provide the Judgment Fund Program Coordinator with a copy of his grade report following completion of undergraduate degree coursework funded by the HEVT Program for a semester, trimester or quarter, and must submit a transcript listing courses taken, dates, and grades annually. An applicant who fails to meet these requirements shall not be eligible for further HEVT Program funding. An applicant who has received HEVT Scholarship funding who did not complete the coursework for that funding period shall not be eligible for further HEVT funding unless he provides documentation that said failure to complete coursework was for good cause, such as serious illness of the applicant, or death or serious illness of applicant’s close family member.

(c) Application Deadline. An applicant who fails to meet the applicable application deadline shall not be awarded a scholarship for the period covered by such deadline. Application deadlines are as follows:

- (1) An undergraduate degree scholarship application for funding for a semester attended or to be attended during the fall semester of a school term shall be due no later than November 10 of that year.

- (2) An undergraduate degree scholarship application for funding for a semester attended or to be attended during the spring semester of a school term shall be due no later than April 10 of that year.
- (3) An undergraduate degree scholarship application for funding for a trimester or quarter shall be due no later than thirty days from the applicant's first day of class, as identified by the institution of higher learning.
- (4) An application for an Undergraduate Degree Scholarship Program Incentive Award must be submitted no later than sixty (60) days following the completion of the semester, trimester or quarter for which the incentive award is sought.

(d) **Primary and Duplicate Benefit Prohibition.** The HEVT Scholarship Program is meant to supplement the higher education scholarship fund programs operated by the Seminole Nation. It is not intended to provide primary or duplicate scholarship funding. Only those applicants not eligible for or who have been denied higher education scholarship funds from all other higher education scholarship fund programs operated by the Seminole Nation may be eligible for the HEVT Scholarship Program. The applicant must provide the Judgment Fund Program Coordinator with documentation demonstrating either the applicant's ineligibility for any other scholarship awarded through and other higher education scholarship program operated by the Seminole Nation or the denial of the applicant's application(s) for scholarship(s) through all such other programs.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 93-02, January 23, 1993; amended by TO 93-09, March 6, 1993; amended by TO 93-19, June 5, 1993; amended by TO 96-03, June 29, 1996; amended by TO 99-05, December 4, 1999 amended by TO 2003-05, June 7, 2003 amended by TO 2004-03, January 17, 2004; amended by TO 2013-01, March 2, 2013; amended by TO 2017-11, September 2, 2017.]

**Section 503-A. Special Eligibility Requirements for Vocational Training Scholarship Program: Award Amounts**

RESERVED: PROGRAM SUSPENDED

[HISTORY: Enacted by TO 93-02, January 23, 1993; amended by TO 96-03, June 29, 1996 amended by TO 99-05, December 4, 1999 amended by TO 2003-05, June 7, 2003; amended by TO 2013-01, March 2, 2013.]

**Section 503-B. Special Eligibility Requirements for the Undergraduate Degree Scholarship Program: Award Amounts**

Special requirements and award amounts for the Undergraduate Degree Scholarship Program shall be as follows:

- (a) **Enrollment.** The applicant must be accepted and enrolled in a junior college, college or university and in pursuit of an undergraduate degree.

(b) Standard Award. An undergraduate degree program student seeking Undergraduate Degree Scholarship Program standard funding for his second semester freshman year or for his sophomore, junior or senior years must maintain a 2.0 grade point average in order to be eligible for continued scholarship funding. The applicant must submit a copy of his official transcript containing his grade point average to the Judgment Fund Program Coordinator following the completion of each semester, trimester or quarter prior to issuance of further Higher Education Scholarship Program funding.

(c) Standard Awards Amount. The HEVT Scholarship Program shall provide grant awards to eligible applicants in undergraduate degree programs on an individual basis. Full-time freshmen students will be awarded four hundred dollars (\$400) per semester or two hundred and sixty-six dollars (\$266) per trimester or two hundred dollars (\$200) per quarter, and not to exceed eight hundred dollars (\$800) for the program year. Full-time sophomore students will be awarded five hundred dollars (\$500) per semester or three hundred and thirty-three dollars (\$333) per trimester or two hundred dollars (\$200) per quarter, and not to exceed one thousand dollars (\$1,000) for the program year. Full-time juniors will be awarded seven hundred dollars (\$700) per semester or four hundred and sixty-six dollars (\$466) per trimester or three hundred and fifty dollars (\$350) per quarter, and not to exceed fourteen hundred dollars (\$1,400) for the program year. Full-time seniors will be awarded eight hundred dollars (\$800) per semester or five hundred thirty-three dollars (\$533) per trimester or four hundred dollars (\$400) per quarter, and not to exceed sixteen-hundred dollars (\$1,600) for the program year. The total of all Undergraduate Degree Scholarship Program standard grants awarded to an applicant, including part-time grants, shall not exceed four thousand and eight-hundred dollars (\$4,800).

(d) Incentive Award. In addition to a standard award, an Undergraduate Degree Scholarship Program incentive award shall be given to any full-time undergraduate degree program student who has achieved,

(1) Subsection Reserved: Payment Suspended

(2) has a minimum of a 3.0 grade point average for a semester, trimester, or quarter and who has completed fifteen (15) hours or equivalent course credit during said semester, trimester, or quarter.

(e) Incentive Award Amounts. The HEVT Scholarship Program shall provide incentive grant awards to eligible applicants in undergraduate degree programs on an individual basis. Students who meet the eligibility criteria for incentive awards shall be awarded the following:

(1) Subsection Reserved: Payment Suspended

(2) Five-hundred (\$500) dollars per semester, or three-hundred and thirty- three (\$333) dollars per trimester, or two-hundred and fifty (\$250) dollars per quarter if a minimum of fifteen (15) hours or equivalent course credit, following successful completion of said semester, trimester, or quarter.

[HISTORY: Enacted by TO 93-02, January 23, 1993; amended by TO 93-09, March 6, 1993; amended by TO 93-19, June 5, 1993; amended by TO 95-02, May 13, 1995; amended by TO 99-05, December 4, 1999 amended by TO 2004-03, January 17, 2004; amended by TO 2013-01, March 2, 2013; subsection



numbering scheme modified on August 26, 2016 pursuant to authority granted by  
SNC Title 21, § 203.]

**Section 503-C. Special Eligibility Requirements for the Advanced Degree Scholarship Program: Award Amounts**

Subsection Reserved: Payment Suspended

[HISTORY: Enacted by TO 93-02, January 23, 1993; amended by TO 93-19,  
June 5, 1993; amended by TO 2013-01, March 2, 2013.]

**Section 503-D. Special Eligibility Requirements for the Required Post-Advanced Degree Continuing Education Scholarship Program: Award Amounts**

Subsection Reserved: Payment Suspended

[HISTORY: Enacted by TO 93-19, June 5, 1993; amended by TO 2013-01,  
March 2, 2013.]

**Section 504. Tribal Incentive Scholarship**

AMENDED AND RE-CODIFIED IN § 503-A.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 93-02,  
January 23, 1993.]

**Section 505. Effective Date: Program Year**

Effective January 1, 2005, each program year will be on a fiscal year basis, commencing October 1 and ending September 30 of the following year. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient funds are available in the Higher Education Scholarship Fund and provided further that the General Council has by resolution approved a budget for such program year.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 92-7,  
June 27, 1992; amended by TO 2005-03, March 5, 2005.]

**Section 506. Release of Scholarship Money**

Unless otherwise expressly provided in Chapter Five herein, the Higher Education Scholarship and the Seminole Nation Princess Education Scholarship award shall be mailed to the student or to the college or university business office of attendance, provided that funds shall not be released to the student until the last day to drop or add to verify the student is enrolled in the number of hours required by applicable provisions of Chapter Five herein.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 93-02,  
January 23, 1993; amended by TO 96-03, June 29, 1996. amended by TO 2004-  
03, January 17, 2004.]

**Section 507. Appropriation of Funds**

The General Council hereby authorizes an initial appropriation of Four Hundred Seven Thousand Three Hundred Thirty-Two Dollars and no/cents (\$407,332) in judgment funds made available under Public Law 101-277 for the Higher Education Scholarship Program. All additional appropriations shall be made by resolution of the General Council. All funds appropriated for the Higher Education Scholarship Program shall be placed in a separate interest-bearing trust account entitled "Higher Education Scholarship Fund." Any interest accruing on fund assets shall be incorporated into the Fund.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 92-7,  
June 27, 1992.]

**Section 508. Duration of Program**

The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient judgment funds are appropriated by resolution of the General Council for such program year.

[HISTORY: Enacted by TO 91-11, November 16, 1991; amended by TO 92-7,  
June 27, 1992.]

**Section 509. Codification**

This law shall be codified as Chapter Five of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 91-11, November 16, 1991.]

## **CHAPTER SIX COMMUNITY CULTURAL AND RECREATIONAL ENHANCEMENT ASSISTANCE PROGRAM**

### **Sections 601 - 611. REPEALED**

[HISTORY: Sections 601 - 608, 610 - 611: Enacted by TO 92-9, August 15, 1992; repealed by TO 2006-09, August 1, 2006.]

[HISTORY: Section 609: Enacted by TO 92-9, August 15, 1992; amended by TO 2005-03, March 5, 2005; repealed by TO 2006-09, August 1, 2006.]

## **CHAPTER SEVEN HOUSEHOLD ECONOMIC ASSISTANCE PROGRAM**

### **Section 701. Title**

This act shall be known as the “Household Economic Assistance Program.”

[HISTORY: Enacted by TO 92-12, September 5, 1992.]

### **Section 702. Findings**

The Seminole Nation makes the following findings relating to its Seminole tribal members in households or family units:

- (a) The basic unit of any nation is the family, and the unique structure of the Seminole Nation is securely entrenched on that premise. Herein lies the strength of the Seminole Nation of Oklahoma;
- (b) Seminole tribal households and/or families are enduring severe financial hardship due, but not limited to, factors such as increasing unemployment, continued increases in the cost of living, low incomes related to underemployment, rising medical costs, and decreasing funds through federal and state assistance programs;
- (c) Severe economic need attributable to these factors is apparent among tribal members nationally as well as locally; and
- (d) In view of such adverse economic conditions, Seminole tribal members as individuals will significantly benefit from an economic assistance program designed to increase an individual household’s capacity to obtain adequate housing or to repair current housing, to maintain household appliances and furnishings, to purchase medical equipment not available from other sources, to meet clothing needs, to pay utilities, to support householder efforts to secure employment, and to purchase other goods and services related to the improvement of the quality of life and standard of living of the applicant and his household.

[HISTORY: Enacted by TO 92-12, September 5, 1992; subsection numbering

scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 703. Effective Date; Program Years**

Effective on January 1, 2005, each program year will be on a fiscal year basis, commencing October 1 and ending September 30 of the following year. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient funds are available in the Household Economic Assistance Program Fund and provided further that the General Council has by resolution approved a budget for such program year.

[HISTORY: Enacted by TO 92-12, September 5, 1992; amended by TO 2005-03, March 5, 2005.]

**Section 704. Eligibility**

The eligibility requirements for the “Household Economic Assistance Program” are:

(a) The applicant shall be an enrolled member of the Seminole Nation of Oklahoma who has been determined to have descended from a member of the Seminole Nation as it existed in Florida on September 18, 1823.

(b) The applicant shall present a:

- (1) Valid Seminole Nation Tribal Enrollment Card
- (2) Certificate of Degree of Indian Blood (CDIB)
- (3) Third form of identification (including but limited to)
  - (A) Social Security Card or
  - (B) Driver’s License; or
  - (C) Birth Certificate.

(c) The applicant shall have reached the age of twenty-one (21) on or before the date of application and shall be the head of a household consisting of one or more persons or be a person who contributes to the well-being or support of a household consisting of more than one person.

(d) The applicant shall sign an application identifying the nature of his need for financial assistance; provided that an award shall be granted only if the applicant’s need falls within one or more of the following specific need categories:

- (1) Category 1: Social Welfare. Social welfare needs shall include purchase of medical equipment not available from other sources, payment of eye care expenses, payment of medical and dental bills, including prescriptions and hospital expenses, and purchase of clothing.

- (2) Category 2: Housing. Housing needs shall include obtaining and maintaining adequate housing, household repairs, maintenance of household appliances and furnishings, and payment of utility bills.
- (3) Category 3: Employment. Employment needs shall include employment related transportation costs, expenses related to efforts to secure employment, and purchase of equipment related to the applicant's vocation.

[HISTORY: Enacted by TO 92-12, September 5, 1992; amended by TO 92-16, December 5, 1992; subsection (e) repealed by TO 93-11, March 6, 1993; amended by TO 99-05, December 4, 1999; amended by TO 2006-10, August 1, 2006, effective January 1, 2007.]

#### **Section 704-A. Assistance Awards**

The applicant shall identify the amount of financial assistance requested for each need identified on the application. The Judgment Fund Program shall determine the amount of assistance to be awarded to each eligible applicant for each requested need category pursuant to guidelines approved by the General Council, consistent with the following limitations on award amounts: An eligible applicant shall receive no more than \$800 for a category 1 need, no more than \$700 for a category 2 need, and no more than \$600 for a category 3 need. No eligible applicant shall receive more than one payment during the Household and Economic Assistance Program year. Total assistance shall not exceed one-thousand dollars (\$1,000) for this program.

[HISTORY: Enacted by TO 92-12, September 5, 1992; amended by TO 92-16, December 5, 1992.]

#### **Section 705. Appropriation of Funds**

The General Council hereby authorizes an initial appropriation of \$5,539,000 from judgment funds awarded to the Seminole Nation in Dockets No. 73 and No. 151 of the Indian Claims Commission made available under Public Law 101-277 for the Household Economic Assistance Program. All additional appropriations for this program shall be made by resolution duly approved by the General Council. All funds appropriated pursuant to this Act shall be placed in a separate interest-bearing trust account entitled "Household Economic Assistance Program." All interest accruing from funds in said trust account shall be incorporated into the Fund.

[HISTORY: Enacted by TO 92-12, September 5, 1992.]

#### **Section 706. Codification**

This law shall be codified as Chapter Seven of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 92-12, September 5, 1992; amended by TO 92-16, December 5, 1992.]

## **CHAPTER EIGHT**

### **SEMINOLE NATION ECONOMIC, BUSINESS AND COMMUNITY DEVELOPMENT PROGRAM**

#### **Section 801. Title**

The title of this Program shall be the Seminole Nation Economic, Business, and Community Development Program.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 99-03,  
August 28, 1999.]

#### **Section 802. Findings**

The General Council of the Seminole Nation hereby finds as follows:

(a) The Seminole Nation has met the priorities of its Judgment Fund Distribution Plan as set forth in §§ 109 and 110 in the area of education, elderly assistance, burial assistance, household assistance and cultural and recreational enhancement by the establishment of Judgment Fund Programs in Chapters Two through Seven herein.

(b) There is a continued need for use of judgment funds in the following priority areas set forth in §§ 109 and 110: health, housing, social services, economic and business development, general community improvement, land acquisition and tribal governmental support and development;

(c) The priority areas set forth in Section 802(b) above will be best served through the use of judgment funds as a funding source for community and economic development activities of the Seminole Nation which will increase the Seminole Nation land base, result in employment of tribal members, and add results in revenues to the Seminole Nation which may be used to meet the individual and collective needs of the Nation as a whole in said priority areas.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 99-03,  
August 28, 1999.]

#### **Section 803. Purpose: Funding Uses**

The purpose of this Program is the establishment of a method of providing the following two categories of funding for community and economic development activities by the Seminole Nation:

(a) Partial payment of operating costs and expenses of the Seminole Nation Economic Development Office or any successor agency established by Title 8 of the Code of Laws of the Seminole Nation, or other agency as deemed appropriate, including personnel, contractual and non-personnel expenses; and

(b) Establishment of an Economic Development Fund administered by the Seminole Nation Economic Development Office or any successor agency established by Title 8 of the Code of Laws of the Seminole Nation, or other agency as deemed appropriate, which may be used for the following purposes:

- (1) Payment of matching tribal shares required by federal and private grants;
- (2) Land acquisition, including expenses related to land purchase, such as options, closing costs, title insurance and trust acquisition process;
- (3) Funding of economic development enterprises by the Seminole Nation; and
- (4) Collateral for bonds issued by the Seminole Nation pursuant to the Federal Indian Tribal Government Tax Status Act, 26 U.S.C. §1781 upon express approval by separate General Council approval.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 99-03, August 28, 1999.]

#### **Section 804. Application for Funding**

The Economic Development Office or any successor agency established by Title 8 of the Code of Laws of the Seminole Nation, or any other agency as deemed appropriate, may seek funds pursuant to this Chapter in the form of an annual budget request submitted to the Finance Committee as part of the annual Judgment Fund Program's budget process. The budget request shall specify the amount of funds sought for operational expenses and the amount of funds sought for the Economic Development Fund or the Community Development Fund and shall include itemization of expenses within each of the two budget categories. The Finance Committee may recommend that the General Council appropriate funds to the Economic Development Office/Community Development Program, upon certification by the Trust Fund Management Board that sufficient funds are available for economic development as part of the annual Judgment Fund Program's budget.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 99-03, August 28, 1999.]

#### **Section 805. Appropriation of Funds**

The General Council hereby authorizes an initial appropriation of Seven Hundred Thousand (\$700,000) in judgment funds made available under Public Law 101-277 for the Economic and Business Development Funding Program, provided that all expenditures of said funds must be pursuant to a budget containing information set forth in Section 804 herein and approved by the General Council. All additional appropriations for this program shall be made by resolution duly approved by the General Council. All funds appropriated for this program for operating costs and expenses of the Seminole Nation Economic Development Office or any successor agency established by Title 8 of the Code of Laws of the Seminole Nation, or other agency as deemed appropriate, shall be placed in an interest bearing "operations" account and all funds

appropriated for the Economic Development Fund/Community Development Fund shall be placed in a separate interest-bearing account entitled “Economic Development Fund/Community Development Fund.” The Trust Fund Management Board shall determine the schedule for draw-down of the funds.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 99-03, August 28, 1999.]

**Section 806. Effective Date: Program Year: Duration of Program**

Effective on January 1, 2005, each program period shall be on a fiscal year basis, commencing October 1 and ending September 30 of the following year. The Seminole Nation shall continue to operate the program from program year to program year, provided that sufficient trust funds are available in the program account or accounts and provided further that the General Council has approved a budget for such program year pursuant to Section 804 herein.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 2005-03, March 5, 2005.]

**Section 807. Annual Audits**

All funds awarded pursuant to this Chapter shall be included in the separate annual Judgment Fund Programs audit, as well as in the annual audit of the Seminole Nation Economic Development Department or Community Development Program or of any successor agency established by Title 8 of the Code of Laws of the Seminole Nation, or other agency as deemed appropriate.

[HISTORY: Enacted by Law 94-1; February 5, 1994; amended by TO 99-03, August 28, 1999.]

**Section 808. Codification**

This law shall be codified as Chapter Eight of Title 18A of the Code of Laws of the Seminole Nation of Oklahoma and shall be effective on date of passage.

[HISTORY: Enacted by Law 94-1; February 5, 1994.]



**TITLE 19  
JUVENILE CODE  
INDEX**

<b>TITLE 19 JUVENILE CODE INDEX .....</b>	<b>i</b>
<b>TITLE 19 JUVENILE CODE .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>1</b>
Section 1. Citation .....	1
Section 2. Purpose .....	1
Section 3. Definitions .....	1
Section 4. Place of Sitting.....	7
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>8</b>
Section 101. Juvenile Court Established.....	8
Section 102. Jurisdiction.....	8
Section 103. Indian Child Welfare Act Transfers from State Courts.....	10
Section 104. Indian Child Welfare Transfers from Tribal Courts.....	11
Section 105. Child Welfare Transfers to Tribal or State Courts .....	11
Section 106. Notice of Legal Rights.....	12
Section 107. Prosecuting Attorney Duties .....	13
Section 108. Jury Trials .....	13
Section 109. Procedure .....	14
Section 110. Hearings.....	14
Section 111. Social Study and Other Reports .....	15
Section 112. Effect of Proceedings .....	15
Section 113. Inspection of Court Records .....	16
Section 114. Expungement of Records.....	16
Section 115. Law Enforcement Records.....	17
Section 116. Social Service Department Records.....	18
Section 117. Identify Confidential .....	18
Section 118. Search Warrants for the Protection Of Children .....	19
Section 119. Issuance and Return of Search Warrant .....	19
Section 120. Expiration of Search Warrant .....	20
Section 121. Exclusion Of Certain Statements By Alleged Delinquent.....	20
Section 122. Appeals .....	20
Section 123. Voluntary Foster Care Authorized .....	21

<b>CHAPTER TWO EMERGENCY CUSTODY .....</b>	<b>22</b>
Section 201. Taking Children into Custody.....	22
Section 202. Notification of Parents.....	23
Section 203. Notification of Court Officers.....	23
Section 204. Release of Detained Child .....	23
Section 205. Special Release Rule for Major Offenses .....	24
Section 206. Court Ordered Release .....	24
Section 207. Extension of Detention Period .....	25
Section 208. Detention and Shelter .....	25
Section 209. Emergency Shelter in Child's Home .....	25
Section 210. Court Ordered Medical Treatment .....	26
Section 211. Court Ordered Commitment for Observation .....	27
<b>CHAPTER THREE ADJUDICATION.....</b>	<b>28</b>
Section 301. Court Intake .....	28
Section 302. Prosecuting Attorney Intake .....	28
Section 303. Diversion by Contract.....	29
Section 304. Diversion Contract Inadmissible.....	29
Section 305. Diversion by Consent Decree .....	30
Section 306. Limitation on Diversions .....	31
Section 307. Petition Form .....	31
Section 308. Petition Contents .....	32
Section 309. Summons .....	32
Section 310. When Summons Unnecessary.....	33
Section 311. Additional Parties to be Summoned.....	34
Section 312. Service of Summons.....	34
Section 313. Failure To Appear .....	34
Section 314. Appointment of Guardian Ad litem.....	35
Section 315. Adjudicatory Hearing. ....	35
Section 316. Mentally Ill and Developmentally Disabled Children.....	36
Section 317. Consent Decree .....	37
Section 318. Dismissal of Petition .....	37
Section 319. Sustaining Petition.....	37
Section 320. Temporary Orders .....	38
<b>CHAPTER FOUR DISPOSITION.....</b>	<b>39</b>

Section 401.	Dispositional Hearing .....	39
Section 402.	Social Studies and Reports.....	39
Section 403.	Treatment Plan .....	39
Section 404.	Medical Examination.....	40
Section 405.	Hearing Purpose .....	40
Section 406.	Hearing Informal .....	40
Section 407.	Continuance .....	41
Section 408.	Order of Protection.....	41
Section 409.	Placement Preferences .....	42
Section 410.	Extended Family Defined .....	43
Section 411.	Neglected or Dependent Child; Disposition .....	43
Section 412.	Children In Need of Supervision; Disposition .....	45
Section 413.	Delinquent Child; Disposition .....	46
Section 414.	Legal Custody; Guardianship.....	46
Section 415.	Probation For Delinquents and Children In Need of Supervision.....	47
Section 416.	New Hearing Authorized .....	48
Section 417.	Continuing Jurisdiction.....	49
Section 418.	Motion for Termination of Parental Rights.....	49
Section 419.	Appointment of Counsel.....	49
Section 420.	Efforts to Locate Parent(s) .....	49
Section 421.	Criteria for Termination.....	50
Section 422.	Criteria .....	51
Section 423.	Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship.....	51
Section 424.	Expert Testimony .....	51
Section 425.	Effect of Decree .....	52
Section 426.	Appeals .....	52
Section 427.	Traditional Custodian's and Grandparents Rights .....	52
Section 428.	Orders for Support.....	53
<b>CHAPTER FIVE CHILD ABUSE .....</b>		<b>54</b>
Section 501.	Legislative Purpose .....	54
Section 502.	Definitions .....	54
Section 503.	Person Required To Report Child Abuse or Neglect .....	55
Section 504.	Required Report of Postmortem Investigation.....	56
Section 505.	Evidence of Abuse .....	57

Section 506.	Temporary Protective Custody .....	57
Section 507.	Reporting Procedures .....	57
Section 508.	Action Upon Receipt of Report .....	58
Section 509.	Child Protection Teams .....	60
Section 510.	Immunity From Liability .....	61
Section 511.	Child Abuse and Child Neglect Diversion Program .....	62
Section 512.	Evidence Not Privileged .....	62
Section 513.	Court Proceedings; Guardian Ad litem .....	62
Section 514.	Central Registry .....	63
Section 515.	Confidentiality of Records.....	65
<b>CHAPTER SIX FOSTER CARE HOMES .....</b>		<b>67</b>
<b>SUBCHAPTER A DEVELOPMENT.....</b>		<b>67</b>
Section 601.	Responsibility .....	67
Section 602.	Licensing Foster Homes .....	67
Section 603.	Basic Standard for Foster Families .....	67
Section 604.	Basic Requirements of Foster Families .....	67
Section 605.	Income of Foster Families .....	68
Section 606.	Physical Facilities.....	68
Section 607.	Family Composition. ....	69
Section 608.	Personal Characteristics.....	70
Section 609.	Foster Parenting Abilities .....	70
<b>SUBCHAPTER B FOSTER HOME LICENSING COMMISSION.....</b>		<b>72</b>
Section 610.	Citation. ....	72
Section 611.	Purpose .....	72
Section 612.	Foster Home Licensing Authority Delegated .....	72
Section 613.	Declaration of Need and Legislative Findings.....	72
Section 614.	Purposes.....	73
Section 615.	Definitions .....	74
Section 616.	Board Created; Number.....	74
Section 617.	Appointment of Board Members .....	74
Section 618.	Qualifications of Board Members.....	75
Section 619.	Term of Office .....	75
Section 620.	Officers .....	76
Section 621.	Quorum.....	76

Section 622.	Duties of Officers .....	76
Section 623.	Meetings .....	76
Section 624.	General Powers .....	77
Section 625.	Applications .....	77
Section 626.	Application Verification .....	78
Section 627.	Consideration by Foster Home Licensing Commission .....	78
Section 628.	Proceedings and Records Confidential.....	79
Section 629.	Issuance of License .....	79
Section 630.	Necessity of Maintaining Standards.....	79
Section 631.	Surrender of Foster Home License.....	80
Section 632.	Suspension of Foster Home License .....	80
Section 633.	Revocation of Foster Home License .....	80
Section 634.	Proceedings and Records Confidential.....	81
Section 635.	Appeal to the District Court.....	82
Section 636.	Powers of Court Not Diminished.....	82
<b>CHAPTER SEVEN ADOPTIONS .....</b>		<b>83</b>
Section 701.	Jurisdiction over Adoptions .....	83
Section 702.	Purpose of Adoptions .....	83
Section 703.	Types of Adoptions .....	84
Section 704.	In Camera Determination of Enrollment Eligibility .....	84
<b>SUBCHAPTER A STATUTORY ADOPTIONS .....</b>		<b>85</b>
Section 705.	Eligibility for Statutory Adoption .....	85
Section 706.	Eligibility to Adopt by Statutory Process .....	85
Section 707.	Consent to Statutory Adoption.....	85
Section 708.	Voluntary Relinquishment.....	86
Section 709.	When Consent of Parents Unnecessary .....	86
Section 710.	Notice and Hearing for Adoptions Without Consent .....	87
Section 711.	Consent of Child .....	87
Section 712.	Petition.....	88
Section 713.	Investigation.....	88
Section 714.	Adoption Hearing. ....	89
Section 715.	Report and Final Decree of Adoption .....	90
Section 716.	Contents of Adoption Order .....	90
Section 717.	Effect of Final Decree of Statutory Adoption.....	90

Section 718.	Records and Hearing Confidential .....	91
Section 719.	Certificates of Adoption .....	92
Section 720.	Foreign Decree .....	93
Section 721.	Adoption of Adults.....	93
Section 722.	Appeals .....	93

**TITLE 19**  
**JUVENILE CODE**  
**INTRODUCTION**

**Section 1.     Citation**

This Title may be cited as the “Juvenile Procedure Act.”

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 2.     Purpose**

- (a)     The purposes of this Title are to:
- (1)     Secure for each child subject to this Title such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Nation and society in general;
  - (2)     Preserve and strengthen the ties between the child and his Tribe whenever possible;
  - (3)     Preserve and strengthen family ties whenever possible, and, to strengthen and improve the home and its environment when necessary;
  - (4)     Remove a child from the custody of his parents and traditional custodians only when his welfare and safety or the protection of the public would otherwise be endangered;
  - (5)     Secure for any child removed from the custody of his parent the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Tribe and society in general.
- (b)     In order to carry out these purposes, the provisions of this Title shall be liberally construed.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012; subsection numbering scheme modified on August 26, 2016  
pursuant to authority granted by SNC Title 21, § 203.]

**Section 3.     Definitions**

Unless the context otherwise requires, as used in this Title, the term:

- (a)     “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition filed pursuant to this Title alleging a child to be neglected, deprived, in-need-of-supervision, or delinquent are supported by the evidence.

(b) “Adult” means a person eighteen years of age or over, except any person alleged to have committed a delinquent act before he became eighteen years of age shall be considered a child under this Title for the purpose of adjudication and disposition of the delinquent act.

(c) “Aunt” means a person who, by blood or marriage, is:

- (1) A female sibling of the biological parents, or
- (2) A female first cousin of the biological parents, or
- (3) A female child of a grandparent, or
- (4) Any other female person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection.

(d) “Brother” means:

- (1) Any male sibling, or
- (2) Any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state, would hold the relationship of a sibling with the person in question.

(e) “Brother-in-law” means the husband of a sister by blood or marriage.

(f) “Child” means a person under eighteen years of age.

(g) “Child care center” means an institution or facility designed for the care of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

(h) “Child in need of supervision” means any child:

- (1) Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
- (2) Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
- (3) Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.

(i) “Child placement agency” means an agency designed for the care or placement of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.



(j) “Child Welfare Officer” shall mean the director of the Nation’s Indian Child Welfare Department. See Social Services Department.

(k) “Clerk” shall mean the Clerk of the Court.

(l) “Code” shall mean the Statutory laws of the Seminole Nation of Oklahoma.

(m) “Commit” means to transfer legal custody.

(n) “Common law” shall mean the traditions and customs of the Nation. In cases where a child is a member of another Indian Tribe, “common law” shall include the traditions and customs of that Indian Tribe.

(o) “Constitution” shall mean the Constitution of the Seminole Nation of Oklahoma, unless otherwise indicated.

(p) “Cousin” means the child of an aunt or uncle.

(q) “Custody” means guardianship of the person.

(r) “Delinquent child.”

(1) A delinquent child is a child who:

(A) Has violated any federal, Tribal, or state law, or any lawful order of the Court made pursuant to this Title, but not including isolated violations of traffic statutes or ordinances, hunting or fishing statutes or ordinances, or

(B) Has habitually violated any traffic, hunting, or fishing statutes or ordinances, or lawful orders of the Court made under this Title.

(2) However, any person fifteen (15) years of age or older who is charged with an offense which is punishable by banishment from the jurisdiction of the Seminole Nation shall be considered as an adult. Upon the arrest and detention, such person accused shall have all the statutory and constitutional rights and protection of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

(s) “Department.” See Social Services Department.

(t) “Deprivation of custody” means the transfer of legal custody by the Court from a parent or a previous legal custodian to another person, agency, or institution.

(u) “Detention” means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or a Court order for placement or commitment.

(v) “Dispositional hearing” means a hearing, held after an adjudicating hearing has found a child to be deprived, neglected, in need of supervision, or delinquent, in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

(w) “District Court” shall mean the lower or general trial Court operating within the jurisdiction of the Nation created pursuant to the Seminole Nation Constitution Article XVI § 1.

(x) “Family care home” or “foster home” means a facility for the care of not more than ten (10) children in a family type setting, licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

(y) "General Council" shall mean the General Council of the Seminole Nation of Oklahoma

(z) “Group care facilities” means facilities other than family care homes or child care centers providing care for small groups of children.

(aa) “Grandparent” means

- (1) A biological grandparent;
- (2) The brothers and sisters of a biological grandparent, and their spouses; or
- (3) Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the terms of subparagraphs (1) or (2) of this subsection.

(bb) “Guardianship of the person” means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:

- (1) The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment,
- (2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child,
- (3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by:
  - (A) judicial decree; or
  - (B) the death of the parents;

- (4) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, agency, or institution; and
- (5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parent only by Court action.

(cc) "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent or in need of supervision under this Title.

(dd) "Indian Tribe" shall mean any federally recognized tribal government other than the Seminole Nation of Oklahoma.

(ee) "Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Seminole Nation of Oklahoma. The jurisdiction of the Nation's Courts is coextensive with that of the Nation itself.

(ff) "Juvenile Court" or "Court" means the Juvenile Division of the District Court of the Seminole Nation, or the Juvenile Court or C.F.R. Court established for other Indian Tribes, or a state Juvenile Court as is appropriate from the context.

(gg) "Nation" and variants thereof, both uppercase and lowercase, shall mean the Seminole Nation of Oklahoma unless otherwise indicated.

(hh) "Neglected Child" or "dependent child" means a child:

- (1) Whose parent, guardian, or legal custodian has subjected him to mistreatment or abuse, or whose parent, guardian or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; or
- (2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or
- (3) Whose environment is injurious to his welfare; or
- (4) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being, whether because of the fault of the parent, guardian, or legal custodian, or because the parent, guardian or legal custodian does not have the ability or resources to provide for the child; or

- (5) Who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, due to or without the fault of his parent, guardian, or legal custodian, or
- (6) Whose parent, guardian, or legal custodian has abandoned him without apparent intent to return, or who has placed him informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of six (6) months.

(ii) “Nephew” means the male child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage or adoption.

(jj) “Niece” means the female child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage or adoption.

(kk) “Parent” means either a natural parent or a parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath, or unless paternity has been established by judicial action.

(ll) “Prosecuting Attorney” shall mean the Attorney General of the Seminole Nation or such other legal representative appointed by the General Council to prosecute crimes and/or juvenile matters.

(mm) “Protective supervision” means a legal status created by court order under which the child is permitted to remain in his own home under the supervision of the Juvenile Court through the Social Services Department during the period during which treatment is being provided to the family by the Social Services Department or other agencies designated by the Court.

(nn) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child’s religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

(oo) “Shelter” means a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.

(pp) “Sister” means

- (1) Any female sibling; or
- (2) Any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to this Title or the

laws of any Indian Tribe or state, would have the relationship of a sibling with the person in question.

(qq) “Sister-in-law” means the wife of a brother by blood or marriage.

(rr) “Social Services Department” means generally the Seminole Nation’s Indian Child Welfare Department, Social Services Department, Family Services Department or other appropriate agency of the Nation designated to work with juvenile issues and/or provide related services. For purposes of this Title, “Social Services Department” and “Indian Child Welfare Department” may be used interchangeably, but shall be interpreted to mean

(ss) “Stepparent” means a person married to a biological parent, but who is not a biological parent of the child.

(tt) “Supreme Court” shall mean the Court of last resort to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

(uu) “Termination of parental rights” or “termination of the parent-child legal relationship” means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child’s right to inherit from the parents whose rights have been terminated.

(vv) “Traditional custodian” means those relatives of the child other than the parent, who, by force of the traditions, customs, and common law of the Nation or other Indian Tribe, have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for its support.

(ww) “Transfer proceeding” means any proceeding in the District Court to grant, accept, or decline transfer of any children’s case from or to the court of any Indian Tribe or state whenever such transfer is authorized by Tribal, federal, or state law.

(xx) “Tribal Court” shall mean the courts of another federally recognized Indian Tribe.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 4. Place of Sitting**

The Juvenile Division of the District Court shall maintain offices and sit in the same place as the District Court sits, provided that the Juvenile Division, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER ONE GENERAL PROVISIONS**

### **Section 101. Juvenile Court Established**

There is hereby created and established within the District Court, a Juvenile Division whose powers and duties are set forth in this Title. Any Judge of the District Court may be assigned to hear cases in the Juvenile Division of the Court by the Chief Judge.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 102. Jurisdiction**

(a) Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:

- (1) Concerning any child in need of supervision;
- (2) Concerning any child who is delinquent, neglected or dependent;
- (3) Concerning any transfer proceeding to or from a court of another sovereign in a children's case;
- (4) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Court's jurisdiction;
- (5) For the issuance of orders of support of minor children;
- (6) To determine the parentage of a child and to make an order of support in connection therewith;
- (7) For the adoption of a person of any age;
- (8) For judicial consent to the marriage, employment or enlistment in military service of a child, when such consent is required by law; and
- (9) For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.

(b) The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(c) Nothing in this section shall deprive the District Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of

habeas corpus or when the question of legal custody is incidental to the determination of a cause in the District Court except that:

- (1) If a petition involving the same child is pending in Juvenile Court, or if continuous jurisdiction has been previously acquired by the Juvenile Court, the District Court shall certify the question of legal custody to the Juvenile Court; and
- (2) The District Court, at any time, may request the Juvenile Court to make recommendations pertaining to guardianship or legal custody.

(d) Where a custody award has been made in the District Court in a dissolution of marriage action or another proceeding, the District Court may take jurisdiction in a case involving the same child if the child is dependent or neglected or otherwise comes within the jurisdiction set forth herein.

(e) Where any person fifteen (15) years of age or older, but less than eighteen years of age, is charged with a criminal offense which is punishable by banishment, such person shall be considered as an adult.

- (1) Such person is presumed to be an adult unless a motion for certification as a juvenile is filed with the Court twenty (20) days before trial. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the Prosecuting Attorney and the accused person.
- (2) The accused may offer evidence to support the motion for certification as a juvenile.
- (3) The Court shall rule on the certification motion of the accused person before trial.
- (4) When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:
  - (A) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
  - (B) Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;
  - (C) The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

- (D) The prospects for adequate protection of the public if the accused person is processed through the juvenile system.
- (5) The court, in deciding on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the court has considered each of the guidelines in reaching its decision.
- (6) Upon completion of the hearing, if the accused person is certified as a child to the Juvenile Division of the District Court, then all adult court records relative to the accused person and the charge shall be expunged and any mention of the accused person shall be removed from public record.
- (7) An order certifying a person as a child or denying the request for certification as a child shall be final order, appealable when entered and filed by the Court Clerk.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Indian Child Welfare Act Transfers from State Courts**

(a) Pursuant to the Indian Child Welfare Act, 25 U.S.C. 1911(b), any state court may transfer to the Juvenile Court any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in the Nation; provided that the Juvenile Court finds that the transfer would not be detrimental to the best interests of the child.

(b) The Juvenile Court shall determine whether the transfer from the state court would be detrimental to the best interest of the child in a transfer hearing initiated by the Nation after the order or request of transfer is received by the Court Clerk. In making such determination, the Court may consider:

- (1) Whether the child or its family will be in need of special services for physical or mental disease or defect which the Nation and its resources are unable to adequately provide,
- (2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed, and
- (3) Any other matters which may adversely affect the Nation's ability to provide treatment or necessary services to the family.



(c) If the Juvenile Court accepts a transferred case, the transferring court shall transmit all documents and legal and social records, or certified copies thereof, to the Juvenile Court. The transferred case shall proceed as if originally filed in the Juvenile Court. Transferred cases shall be assigned a Juvenile Court case number as in other cases. Thereafter, all pleadings shall list below the Juvenile court case number the state court case number and indicate the County from which the case was transferred.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 104. Indian Child Welfare Transfers from Tribal Courts**

(a) Any Tribal Court may transfer to the Juvenile Court any case concerning any child who is a member or eligible for membership in the Nation, provided that the Juvenile Court finds that the transfer would not be detrimental to the best interests of the child.

(b) The Juvenile Court shall determine whether the transfer to the Nation's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Nation after an order or request of transfer is received by the Court Clerk. In making such determination, the Court may consider:

- (1) Whether the child or its family will be in need of special services for physical or mental disease or defect which the Nation and its resources are unable to adequately provide,
- (2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed; and
- (3) Any other matters which may adversely affect the Nation's ability to provide treatment or necessary services to the family.

(c) If the Juvenile Court accepts a transferred case, the transferring court shall transmit all documents and legal and social records, or certified copies thereof, to the Juvenile Court. The transferred case shall proceed as if originally filed in the Juvenile Court. Transferred cases shall be assigned a Juvenile Court case number as in other cases. Thereafter, all pleadings shall list below the Juvenile Court case number the original Tribal Court case number and indicate the Tribe from which the case was transferred.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 105. Child Welfare Transfers to Tribal or State Courts**

(a) The Juvenile Court, in its discretion, is authorized to transfer any children's case arising within the Court's jurisdiction, said child not being a member or eligible for membership in the Nation, to the Court of the Child's Indian Tribe, or if the child is a non-Indian, to the

Courts of the State where the child is a resident or domiciled, upon the petition of the Prosecuting Attorney, either parent, a custodian or guardian, the Child's Indian Tribe, or an appropriate official of the Child's state.

- (b) In making such transfers the Juvenile Court may consider:
  - (1) The best interests of the child,
  - (2) Any special needs or mental or physical disease or defects of the child and family and the ability of the Nation and the receiving jurisdiction to meet those needs,
  - (3) If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction,
  - (4) Emotional, cultural, and social ties of the child and its family; and
  - (5) The likelihood that the same child and family would return to the Nation's jurisdiction within a reasonable time and come before the Juvenile Court again.

(c) Upon finding a transfer is appropriate, the Court may order or request transfer as provided in this Section. The Court shall serve a certified copy of the Order or Request to Accept Transfer, the legal case file, and any social or police reports concerning the child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 106. Notice of Legal Rights**

- (a) At their first appearance before the court, the child and his parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:
  - (1) Their right to a jury trial upon demand, where available;
  - (2) Their right to be represented by an attorney, at their own expense, at every stage of the proceeding;
  - (3) Their right to see, hear, and cross-examine all witnesses against them;
  - (4) Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them; and

(5) In juvenile delinquency proceedings, the right of the child not to be compelled to testify against himself.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent attorneys are available at no fee to the individual, shall be appointed by the Court in proceedings wherein the Nation is a party and termination of the parent-child legal relationship is stated as a possible remedy in the summons.

(c) The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(d) If the child and his parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 107. Prosecuting Attorney Duties**

The Prosecuting Attorney shall represent the Nation in the interest of the child in all proceedings subject to this Title in which the Nation is a party. In proceedings subject to this Title in which the Nation is not a party, the Prosecuting Attorney, upon request of the court, shall intervene on behalf of the Nation in the interest of the child and, thereafter, shall act as the guardian ad litem of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 108. Jury Trials**

(a) A child, his parent or guardian, or any interested party may demand a trial by a jury of not more than six, or the court on its own motion may order such a jury to try a case:

(1) In adjudicatory hearing concerning an alleged delinquent, neglected, or deprived child, or child in need of supervision, where termination is stated as a possible disposition in the petition; or

(2) In determining the parentage of a child under this Title.

(b) Unless a jury trial is demanded, it shall be deemed to be waived.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 109. Procedure**

(a) The rules of juvenile procedure set forth herein shall apply in all proceedings under this Title. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure of the Seminole Nation found in Title 3 shall apply.

(b) In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case.

(c) The District Court shall have the authority by written Court rule not inconsistent with this Title or the Rules of Civil Procedure and filed of record in the Court Clerk's office and Council Secretary's office to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Title.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 110. Hearings**

(a) Hearings shall be held before the Court without a jury, except as provided in Section 108, and may be conducted in an informal manner, except in proceedings brought concerning an alleged delinquent. The general public shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public to attend. The Court shall admit only such person as have an interest in the case or the work of the Court, including persons whom the parents or guardian wish to be present unless an order has been entered authorizing the general public to attend. Hearings may be continued from time to time as ordered by court.

(b) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the Judge or referee.

(c) When more than one child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated or heard separately at any stage of the proceeding in the Court's discretion.

(d) Children's cases shall be heard separately from adult's cases, and the child or his parents, guardian, or other custodian may be consolidated or heard separately at any stage of the proceeding in the Court's discretion.

(e) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings under this Title shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection (e) is guilty of a misdemeanor and, upon conviction, thereof,

shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the jail utilized by the Nation for not more than thirty (30) days, or by both such fine and imprisonment.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 111. Social Study and Other Reports**

(a) Unless waived by the Court, the Social Services Department or other agency designated by the Court shall make a social study and report in writing in all children's cases, except:

- (1) If the allegations of a petition filed under Section 102 are denied, the study shall not be made until the Court has entered an order of adjudication; and
- (2) The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

(b) For the purpose of determining proper disposition of a child, the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.

(c) The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (b) of this section.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 112. Effect of Proceedings**

(a) No adjudication or disposition in proceedings under Section 102 shall impose any civil disability upon a child or disqualify him from any Tribal personnel system or military service application or appointment or from holding Tribal office.

(b) No adjudication, disposition, or evidence given in proceedings brought under this Title shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this Title concerning the same child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 113. Inspection of Court Records**

(a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.

(b) With consent of the court, records of court proceedings may be inspected by the child, by persons having legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

(c) Probation counselor's records and all other reports of social and clinical studies shall not be open to inspection of the general public, except by consent of Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 114. Expungement of Records**

(a) Any person who has been adjudicated delinquent or in need of supervision, who was taken into custody on an allegation of delinquency or need of supervision, or who was the subject of a petition for delinquency or need of supervision may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

(b) Upon the filing of a petition for expungement or entering of a court order, the Court shall set a date for a hearing and shall notify the Prosecuting Attorney and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record, including all agencies or officials known to have relevant files relating to the individual.

(c) The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

- (1) The subject of the hearing has not been convicted of a felony, an offense punishable by banishment, or of a misdemeanor involving moral turpitude, and has not been adjudicated under this Title since the termination of the Court's jurisdiction;

- (2) No proceeding concerning a felony, an offense punishable by banishment, a misdemeanor involving moral turpitude, or a petition under this Title is pending or being instituted against him; and
- (3) The rehabilitation of the person has been attained to the satisfaction of the Court.

(d) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records and only by that person named in such petition.

(g) In any proceeding alleging delinquency or need of supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 115. Law Enforcement Records**

(a) The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- (1) To the victim in each case when the child is found guilty of a delinquent act;
- (2) When the child has escaped from an institution to which the child has been committed;
- (3) By order of the Court;
- (4) When the Court orders the child to be held for criminal proceedings;
- (5) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or

- (6) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 116. Social Service Department Records**

The records of the Social Service Department concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- (a) To the victim in each case when the child is found guilty of a delinquent act;
- (b) When the child has escaped from an institution to which the child has been committed;
- (c) By order of the Court;
- (d) When the Court orders the child to be held for criminal proceedings;
- (e) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or
- (f) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by the Seminole Nation Code of Laws.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 117. Identify Confidential**

No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions of this Title may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local Law Enforcement Agency when necessary to assist in apprehension or to conduct a current investigation, or when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]



### **Section 118. Search Warrants for the Protection Of Children**

(a) A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the territorial jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.

(b) Such warrant shall be issued only on the conditions that the application for the warrant shall:

- (1) Be in writing and supported by affidavit sworn to or affirmed before the Court;
- (2) Name or describe with particularity the child sought;
- (3) State that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;
- (4) State the address or legal description of the place to be searched; and
- (5) State the reasons why it is necessary to proceed with the issuance of a search warrant pursuant to this Section instead of proceeding by issuance of a summons.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 119. Issuance and Return of Search Warrant**

(a) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(b) The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located.

(c) The warrant shall state the grounds or probable cause for its issuance and the names of the persons who support the affidavits. The warrant shall be issued in form substantially similar to other search warrants.

(d) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct.

(e) A copy of the warrant and the application therefore shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

(f) If the child is found, the child shall be taken into custody, transported to and placed in a detention or shelter facility subject to the conditions of Section 204(c) and (d).

(g) The warrant shall be returned to the issuing court, immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Prosecuting Attorney. If the child was not found, such information should be subscribed on the warrant.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 120. Expiration of Search Warrant**

A search warrant for the protection of a child shall be null and void if not served within ten days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 121. Exclusion Of Certain Statements By Alleged Delinquent**

(a) No statements or admission of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if to the extent such counsel is available for appointment at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

(b) Notwithstanding the provisions of subsection (a) of this Section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 122. Appeals**

(a) An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in

place of the name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(b) The Nation shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 123. Voluntary Foster Care Authorized**

In order to provide better treatment for a family's problems and to better protect children, the Department is authorized to accept a child for foster care when:

(a) The parent, guardian, or other physical or legal custodian has consented to such foster care in writing before a Judge of a court of competent jurisdiction, by the Judge's certificate that the terms and conditions and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language which was understood.

(b) Consent to foster care placement may be withdrawn by the person giving same, the parent or other legal guardian having legal custody, or a traditional custodian at any time and the child shall be returned to the authorized person requesting the child's release within forty- eight (48) hours.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER TWO EMERGENCY CUSTODY**

### **Section 201. Taking Children into Custody**

(a) A child may be taken into temporary custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:

- (1) The child has committed an action which would be a major crime, misdemeanor, or Tribal ordinance violation if committed by an adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by law;
- (2) The child is abandoned, lost, or seriously endangered in its surroundings or seriously endangering others and immediate removal appears to be necessary for its protection or the protection of others;
- (3) The child has run away or escaped from its parent(s), guardian, or legal custodian; or
- (4) The child has violated the conditions of probation and is under the continuing jurisdiction of the Juvenile Court.

(b) A child may be detained temporarily without an order of the Court by an adult other than a law enforcement officer if the child has committed or is committing an act in the presence of such adult which would be a violation of any federal or Tribal law, other than a violation of traffic and game and fish laws or regulations, if committed by an adult. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said child.

(c) A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain, without an order of the Court, a child brought before him for treatment whom he reasonably suspects to be the victim of child abuse. Any person detaining a child due to possible child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume custody of the child. The law enforcement officer assuming custody shall have the authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed for a period long enough to contact a Judge for an emergency medical treatment order shall create a presumption that the law enforcement officer properly gave his consent to treatment of the child.

(d) A traditional custodian may take a child into their custody when under tribal custom or common law they are vested with responsibility for the protection or care of a child and they reasonably believe under the circumstances before them that the child is in need of care, supervision or protection from harm. Upon taking the child into custody, the traditional

custodian should promptly contact the Court or the Child Welfare Program concerning their actions.

(e) In all other cases, a child may be taken into custody only upon an order of the Court.

(f) The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 202. Notification of Parents**

When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailor in whose physical custody the child is placed.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 203. Notification of Court Officers**

Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility pursuant to Section 201(c), the officer or other person who took the child to a detention, shelter or medical facility shall notify the Prosecuting Attorney, the Social Services Department, and any agency or person so designated by the Court at the earliest opportunity that the child has been taken into custody and where the child has been taken. He shall also promptly file a brief written report with the Prosecuting Attorney, the Social Services Department, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four (24) hours excluding Saturdays, Sundays, and legal holidays.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 204. Release of Detained Child**

(a) Except as provided in subsection (b) of this section, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence and other necessary information and to contact his parent, guardian, or legal custodian.

(b) The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that the child be

detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the Court, to bring the child to the court at a time set or to be set by the Court.

(c) If the child is not released as provided in subsection (b) of this section, the child shall be taken directly to the Court or to the detention facility or shelter approved by the department and designated by the Court without unnecessary delay unless admitted to a facility for medical treatment pursuant to Section 201(c) of this Title.

(d) No child shall be detained pursuant to subsection (c) for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If not Court order is issued within such time, the child must be released.

(e) Notwithstanding the provisions of subsection (d) of this section, a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or shelter up to seven days, during which time arrangements shall be made for returning the child to his parent, or legal custodian.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 205. Special Release Rule for Major Offenses**

(a) No child taken to a detention or shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime or offense punishable by banishment if committed by an adult shall be released from such facility if a law enforcement agency has requested, in writing, that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that the child be detained. No such child shall thereafter be released from detention except after a hearing, reasonable advanced notice of which has been given to the Prosecuting Attorney, alleging new circumstances concerning the further detention of the child.

(b) When, following a detention hearing as provided for by subsection (a) of this section, the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.

(c) Nothing herein shall be construed as depriving a child of right to bail under the same circumstances as an adult.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 206. Court Ordered Release**

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child, except children being held pursuant to section 201 of this Title, from detention or shelter care without holding a hearing, either without

restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 207. Extension of Detention Period**

For good cause shown the Court may extend the time period during which a child may be detained without a petition and court order for a period not exceeding five (5) working days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four (24) hours.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 208. Detention and Shelter**

(a) A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a juvenile shelter facility approved by the Department and designated by the Court or the Nation's or Bureau of Indian Affairs Department of Social Services and shall not be placed in detention.

(b) No child under the age of fourteen (14) and, except upon the order of the court, no child fourteen (14) years of age or older and under sixteen (16) years of age, shall be detained in a jail, lockup, or other place used for confinement of adult offenders or persons charged with crime. The exception shall be used by the Court only if no other suitable place of confinement is available.

(c) A child fourteen (14) years of age or older shall be detained separately from adult offenders or persons charged with crime, including any child ordered by the Court to be held for criminal proceedings.

(d) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the Court and Prosecuting Attorney immediately when a child who is or appears to be under the age eighteen is received at the facility, except for a child ordered by the Court to be held for criminal proceedings.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 209. Emergency Shelter in Child's Home**

(a) Upon application of a Tribal or Bureau of Social Services Department, the Court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Tribal or Bureau of Indian Affairs Department of Social Services, which has emergency caretaker services available, to remain in the child's home with the child until a parent, or legal

guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Tribal or Bureau of Indian Affairs Department of Social Services, to resume charge of the child, but in no event shall such period of time exceed seventy-two (72) hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Tribal or Bureau of Indian Affairs Department of Social Services, to resume charge of the child.

(b) The director of the Tribal or Bureau of Indian Affairs Department of Social Services shall designate in writing the representative of these departments authorized to perform such duties.

(c) The court order allowing emergency shelter in the child's home may be written or oral, provided, that if consent is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 210. Court Ordered Medical Treatment**

(a) At any time after a child is taken into custody, with or without a court order, and prior to adjudication on the merits:

(1) When the Court finds that emergency medical, surgical, or dental treatment is required for a child in Tribal custody it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this Title or pursuant to Court order.

(2) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.

(b) After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]



**Section 211. Court Ordered Commitment for Observation**

If it appears that any child being held in detention or shelter may be mentally ill, developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two (72) hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten (10) days.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER THREE ADJUDICATION**

### **Section 301. Court Intake**

(a) Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction by reason of delinquency, need of supervision, neglect, or deprivation, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Social Services Department, Child Welfare Officer, who shall determine whether the interests of the child or of the community requires that further action be taken.

(b) If the Child Welfare Officer determines that the interests of the child or of the community require that court action be taken, he shall request in writing the Prosecuting Attorney to file a petition and deliver a copy of the entire case file to the Prosecuting Attorney.

(c) If the Child Welfare Officer determines that the interests of the child or of the Court do not require court action, the Department may offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 302. Prosecuting Attorney Intake**

(a) Upon receiving a request to file a petition and the accompanying reports and files from the Child Welfare Officer, the Prosecuting Attorney shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Nation's Rules of Evidence to establish the jurisdiction of the Juvenile Court over the child.

(b) If the Prosecuting Attorney determines that there is not sufficient evidence available to establish the jurisdiction of the Juvenile Court over the child, he shall, in writing, refuse to file the requested petition, or, in his discretion, may request the Social Services Department or Law Enforcement Agency to conduct a further investigation into the matter.

(c) If the Prosecuting Attorney determines that sufficient evidence is available to establish the jurisdiction of the Juvenile Court over the child, he shall file a petition concerning the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 303. Diversion by Contract**

(a) Prior to the filing of a petition, either the Child Welfare Officer, or the Prosecuting Attorney with the consent of the Child Welfare Officer may divert any children's case, except a case subject to Sections 205 or 306 of this Title from the court process.

(b) Diversion shall be made by entering into a contract with the child's parent, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts and the Child Welfare Officer or Prosecuting Attorney on behalf of the Nation agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract.

(c) Each diversion contract shall contain the following:

- (1) The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.
- (2) The specific treatment programs the parents, guardian, or custodian agree to successfully complete and their duration.
- (3) The specific facts which the parents, guardian, or custodian agree to do or to refrain from doing.
- (4) The specific treatment or other social services to be offered by the Nation or the Bureau of Indian Affairs and accepted by the family.
- (5) A fixed, limited time for the contract to run not exceeding one year.
- (6) That the Nation will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term of the contract.
- (7) That each party has received a copy of the contract.

(d) No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge of the Juvenile Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 304. Diversion Contract Inadmissible**

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence, except, that the parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of

compliance with the terms of the contract the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm. Proof of the contract shall not be an admission of the parents, guardian, or custodian of any of the facts alleged therein.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 305. Diversion by Consent Decree**

(a) After filing of a petition, the Prosecuting Attorney, with the consent of the Child Welfare Officer, may divert any children's case, except a case subject to Sections 205 or 306 of this Title from the adjudicatory process with the consent of the respondents and the Court by obtaining a Consent Decree if:

- (1) The Court has informed the child and his parents, guardian or legal custodian of their rights to:
  - (A) Deny the allegations of the petition and require the Nation to prove each allegation by admissible evidence;
  - (B) Confront and cross-examine the witnesses against them and to call witnesses on their own behalf;
  - (C) Refuse to testify against themselves or each other in delinquency cases;
  - (D) A trial by jury of six persons at the adjudicatory stage, where a jury trial is available;
  - (E) Be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel; and
- (2) The Court believed they understood their rights.
- (3) Written consent to the decree is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication.
- (4) The Tribal or Bureau of Indian Affairs Social Service Department has prepared a treatment plan for the family to be incorporated into the Consent Decree which distinctly states:

- (A) The specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration;
- (B) The specific treatment or other social services to be offered by the Nation or the Bureau of Indian Affairs and accepted by the family;
- (C) The specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing; and
- (D) The person or agency to be vested with custody of the child if the child cannot remain in its own home, the specific provisions of (A) - (C) above which must be completed or accomplished for a specific duration before the child is returned to its own home, and the period of supervision of the child in his own home.

(b) After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees that the plan is satisfactory, shall order all parties by the Consent Decree to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided, that if the family fails to comply with the treatment plan, the Court, on motion of the Prosecuting Attorney shall proceed with the adjudication.

(c) A Consent Decree shall remain in effect for not exceeding one year, provided, that upon notice of hearing the Court may extend the force of the decree for an additional term of one year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if the Decree is complied with.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 306. Limitation on Diversions**

No child shall be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve-months or has been handled by informal adjustment for a delinquent act in the preceding twelve months.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 307. Petition Form**

The Prosecuting Attorney shall sign and file all child welfare petitions alleging a child to be delinquent, in-need-of-supervision, deprived, or neglected. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE DISTRICT COURT  
JUVENILE DIVISION  
SEMINOLE NATION OF OKLAHOMA

The SEMINOLE NATION	)	
In The Interest Of:	)	
	)	
_____	)	Case No. JFJ-_____
	)	
An Alleged_____Child,	)	
And Concerning:	)	
	)	
_____	)	
_____	)	
Respondent(s).	)	

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 308. Petition Contents**

(a) The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

(b) All petitions filed alleging the dependency or neglect of a child may include the following statement: "Termination of the parent - child legal relationship is a possible remedy available if this petition is sustained." Unless such statement is contained in the petition, no termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an amended petition is filed based upon the new facts and containing the above required statement.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 309. Summons**

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE DISTRICT COURT  
JUVENILE DIVISION  
SEMINOLE NATION OF OKLAHOMA

The SEMINOLE NATION	)	
In The Interest Of:	)	

_____	)	
	)	Case No. JFJ-_____
	)	
An Alleged_____Child,	)	
And Concerning:	)	
	)	
_____	)	
_____	)	
Respondent(s).	)	

# SUMMONS

THE SEMINOLE NATION to:

\_\_\_\_\_, Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Juvenile Court alleging that the above name\_\_\_\_\_is a (delinquent) (deprived or neglected) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the District Court in and for the Seminole Nation of Oklahoma, [Address of Court], on the\_ day of\_\_\_\_\_, 20\_\_, at the hour of\_\_\_\_\_o'clock\_.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above-named child is in your physical custody or subject to your control, to bring the child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

\_\_\_\_\_ Court Clerk

[Seal]

(Return as in other civil cases)

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## Section 310. When Summons Unnecessary

A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 311. Additional Parties to be Summoned**

The Court, on its own motion or on the motion of any party, may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 312. Service of Summons**

(a) Summons shall be served personally, pursuant to the Seminole Nation Civil Procedure Code.

(b) If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Court's jurisdiction, the fact of the child's presence within the Nation's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

- (1) When the residence of the person to be served outside the Nation's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.
- (2) When the person to be served has no residence within the Nation's jurisdiction and place of residence is not known or when the person cannot be found within the Nation's jurisdiction after due diligence, service may be by publication.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 313. Failure To Appear**

(a) Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.

(b) If after reasonable effort the summons cannot be served or if the welfare of the child requires that the child be brought immediately into the custody of the court, a bench warrant may be issued for the parent, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.

(c) When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child on



the date set by the court, a bench warrant may be issued for the parent or other person, the child, or both.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 314. Appointment of Guardian Ad litem**

(a) The Court may appoint a guardian ad litem to protect the interest of a child in proceedings filed by petition pursuant to Section 307 of this Chapter when:

- (1) No parent, guardian, legal custodian, or relative of the child appears at the first or, any subsequent hearing in the case;
- (2) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or
- (3) The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

(b) The Court may appoint a guardian ad litem for any parent in proceedings pursuant to Section 307 of this Title who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(c) At the time any child first appears in court, if it is determined that the child has no guardian of his person, the Court may appoint a guardian of the person of the child before proceeding with the matter.

(d) In proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem may be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.

(e) All guardians ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 315. Adjudicatory Hearing**

(a) At the adjudicatory hearing, which shall be conducted as provided in the rules of civil procedure, except that the rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children except that

jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(b) When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

- (1) In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.
- (2) If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motions if it finds it to be in the best interests of the child or any other party to the proceedings.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 316. Mentally Ill and Developmentally Disabled Children**

(a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

(b) A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.

(c) If the report of the examination made pursuant to subsection (a) of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

(d) The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

(e) The Court shall set a time for resuming the hearing on the original petition when the report of the examination made pursuant to subsection (a) of this section states that:

- (1) The child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;
- (2) The child is found not to be mentally ill; or

(3) The child is developmentally disabled but not mentally ill.

(f) “Mentally ill person” means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

(g) “Developmental disability” means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first eighteen years of life, which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(h) “Mentally retarded person” means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 317. Consent Decree**

At any time during the adjudicatory process, but prior to the entry of an order sustaining the petition as provided in Section 319 of this Title, a consent decree may be entered as provided in Section 305 of this Title.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 318. Dismissal of Petition**

When the court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction or other previous temporary order.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 319. Sustaining Petition**

When the Court finds that the allegations of the petitions are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent and making the child a ward of the

Court. In cases concerning neglected or dependent child, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support adjudication under this Section.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 320. Temporary Orders**

Upon sustaining a petition the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER FOUR DISPOSITION**

### **Section 401. Dispositional Hearing**

After making an order of adjudication, finding the child to be a ward of the court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Nation at a hearing scheduled for that purpose.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 402. Social Studies and Reports**

(a) After the adjudication and prior to disposition, the Court may order any agency within its jurisdiction or request any other agency to prepare and submit to the Court a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

(b) After adjudication the Court may order or request any agency to submit a pre-adjudicatory social study or report helpful in determining proper treatment and disposition for the family.

(c) Such reports shall be filed with the court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 403. Treatment Plan**

(a) In every case the Court shall order the Social Services Department and/or the Bureau of Indian Affairs Social Services Department to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

(b) The treatment plan shall contain at a minimum:

- (1) A brief social and family history;
- (2) A brief statement of what caused the Court to exercise its jurisdiction;
- (3) The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;
- (4) The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;

- (5) The specific treatment or other social services offered by the Nation or Bureau of Indian Affairs which the family should be required to accept; and
- (6) The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be returned to its home under supervision and when court supervision should cease.

(c) The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 404. Medical Examination**

The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose. The Court may also authorize any medical treatment or procedure reasonably necessary for the child's well-being on the child's behalf.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 405. Hearing Purpose**

The purpose of the dispositional hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 406. Hearing Informal**

The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 407. Continuance**

(a) The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

(b) If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parent, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 408. Order of Protection**

(a) The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this Chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to the proceeding.

(b) The order of protection may require any such person:

- (1) To stay away from a child or his residence;
- (2) To permit a parent to visit a child at stated periods;
- (3) To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given;
- (4) To give proper attention to the care of the home;
- (5) To cooperate in good faith with an agency:
  - (A) Which has been given legal custody of a child;
  - (B) Which is providing protective supervision of a child by court order;  
or
  - (C) Which the child has been referred by the Court;
- (6) To refrain from acts of commission or omission that tend to make a home an improper place for a child; or

(7) To perform any legal obligation of support.

(c) When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (e) of this section.

(d) After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Nation will be served thereby.

(e) A person failing to comply with an order of protection without good cause may be found in contempt of court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 409. Placement Preferences**

(a) In making a placement of or committing legal custody of a child to some person in the dispositional process, whether for foster care or adoption, the Court shall place the child in the following descending order of preference:

- (1) The natural parents, adoptive parents, or step-parents as the case may be;
- (2) A traditional custodian who is a member of the Nation and that person's spouse;
- (3) A traditional custodian who is a member of another Indian Tribe and that person's spouse;
- (4) A member of the Nation over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and that person's spouse;
- (5) A member of another Indian Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and that person's spouse;
- (6) Any other person over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and that person's spouse;
- (7) Any other member of the Tribe and that person's spouse;
- (8) Any other Indian person and that person's spouse;



- (9) A foster home licensed by the Social Services Department;
- (10) An Indian foster home licensed by any other licensing authority within the State or an Indian foster home licensed by another Indian Tribe; or
- (11) An institution for children licensed or approved by the Social Services Department with a program suitable to meet the child's needs.

(b) Where appropriate, the Court may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying these preferences.

(c) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

(d) The Court may place the child with the Social Services Department of either the Nation or the Bureau of Indian Affairs or a child placement agency approved by the Nation's Social Services Department or the General Council for further placement in lieu of a direct placement pursuant to subsection (a) of this Section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

(e) State courts shall follow the placement preference rules outlined herein.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 410. Extended Family Defined**

For purposes of state court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., a child's extended family is defined to mean the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent over eighteen years of age and their spouse as those terms of relation are defined in this Title.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 411. Neglected or Dependent Child; Disposition**

(a) When a child has been adjudicated to be neglected or dependent, the Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship, it shall include one or more of the following provisions which the Court finds appropriate:

- (1) The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under conditions as the Court may impose;
- (2) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with Section 409 of this Title;
- (3) The Court may place legal custody in the Social Services Department or a child placement agency for placement in a family care home, or other child care facility in accordance with Section 409 of this Title; or
- (4) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that the child receive other special care and may place the child in a hospital or other suitable facility for such purposes.

(b) The Court may enter a decree terminating the parent-child legal relationship of parents when all reasonable efforts to treat the family have failed.

(c) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the mother of a child whose father is unknown, the Court may:

- (1) Vest the Social Services Department or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption according to the placement preferences; or
- (2) Make any other disposition provided in subsection (a) of this Section that the Court finds appropriate.

(d) Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Court may:

- (1) Leave the child in the legal custody of the other parent and discharge the proceedings; or
- (2) Make any other disposition provided in subsection (a) of this section that the Court find appropriate.

(e) When a child has been adjudicated neglected because the child has been abandoned by his parent or parents, the Court may enter a decree terminating the parent-child legal relationship if it finds:

- (1) That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months and during this period have not manifested to the child or the person having physical custody a firm

intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

- (2) That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents have failed.

(f) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 412. Children In Need of Supervision: Disposition**

When a child has been adjudicated as being in need of supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

(a) The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose;

(b) The court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with Section 409 of this Title;

(c) The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

- (1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;
- (2) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and
- (3) The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty (180) days;

(d) The Court may place legal custody in the Social Services Department or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center;

(e) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that the child receive other special care, and may place the child in a hospital or other suitable facility for such purposes; or

(f) The Court may commit the child to any institution or group care facility designated by the Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 413. Delinquent Child; Disposition**

If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child.

(a) The designated institution shall provide the Court with any information concerning a child committed to its care which the Court may at any time require.

(b) A commitment of a child to a designated institution under Section 413 or Section 422 shall be for an indeterminate period not to exceed two (2) years.

(c) The Social Services Department may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

(d) Each commitment to a designated institution shall be reviewed no later than six (6) months after it is entered and each six (6) months thereafter.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 414. Legal Custody; Guardianship**

(a) Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in this Title.

(b) Any individual, agency or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined in this Title; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the Court.

(c) If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(d) An individual, agency, or institution having legal custody of guardianship of the person of a child shall give the court any information concerning the child which the Court may at any time require.

(e) Any agency other than the department or institutions vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.

(f) No individual vested by the court with legal custody of child shall remove the child from the state for more than thirty (30) days without Court approval.

(g) A decree vesting legal custody of a child in an individual, institution, or agency other than the department of institutions shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Court no later than six (6) months after it is entered.

(h) The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying renewal of the decree.

(i) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he so requests.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 415. Probation For Delinquents and Children In Need of Supervision**

(a) The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition or probation for a child who is fourteen years of age or older but less than eighteen years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, but shall not exceed forty-five days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

(b) The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

(c) The Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated.

(d) When it is alleged that a child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his parents, guardian, or other legal custodian, and any other parties to the proceeding.

(1) The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

(2) The hearing on the alleged violation shall be conducted as soon as possible.

(e) If the Court finds that the child violated the terms and condition of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this Chapter which is in the best interest of the child and the Nation.

(f) If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

(g) If the Court revokes the probation of a person over sixteen years of age, in addition to other action permitted by this Chapter, the Court may sentence him to the Tribal jail for a period not to exceed one hundred eighty days during which the child may be released during the day for school attendance, job training, or employment, as ordered by the Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 416. New Hearing Authorized**

(a) A parent, guardian, custodian, or next friend of any child adjudicated under this Chapter, or any person affected by a decree in a proceeding under this Chapter, may petition the court for a new hearing on the following grounds:

(1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

(2) That irregularity in the proceedings prevented a fair hearing.

(b) If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 417. Continuing Jurisdiction**

Except as otherwise provided in this Chapter, the jurisdiction of the Court over any child adjudicated as neglected or dependent, in need of supervision, or delinquent shall continue until the child becomes eighteen years of age unless terminated by court order.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 418. Motion for Termination of Parental Rights**

Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 419. Appointment of Counsel**

(a) After a motion for termination of a parent-child legal relationship is filed pursuant to this Chapter, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient unobligated funds to pay an attorney a reasonable attorney fee. An attorney so appointed may file an application with the Court for payment of a reasonable fee, but the award of fees shall be dependent on the funds then available.

(b) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law and the customs of the Nation. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 420. Efforts to Locate Parent(s)**

Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 421. Criteria for Termination**

(a) The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:

- (1) That the child has been abandoned by his parent or parents; or
- (2) That the child is adjudicated dependent or neglected and any of the following exists:
  - (A) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent or parents or has not been successful;
  - (B) That the parent is unfit; or
  - (C) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(b) In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents rendered the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:

- (1) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;
- (2) Conduct towards the child of a physically or sexually abusive nature;
- (3) History of violent behavior;
- (4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
- (5) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
- (6) Neglect of the child;
- (7) Long-term confinement of the parent;
- (8) Injury or death of a sibling of the child due to proven parental abuse or neglect; or



- (9) Reasonable efforts by child care agencies which have been unable to rehabilitate the parent or parents.

(c) In considering any of the factors in subsection (b) of this Section in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 422. Criteria**

The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 423. Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship**

(a) The Court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

(b) If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediate feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 424. Expert Testimony**

(a) Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the court funds.

(b) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 425. Effect of Decree**

(a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal right, power, privileges, immunities, duties and obligations with respect to each other, except for the right of the child to inherit from the parent.

(b) No order or decree entered pursuant to this Chapter shall disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian Tribe, any agency, any state, or the United States.

(c) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 426. Appeals**

(a) Appeals of court decrees made under an order terminating parental rights shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

(b) Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of the Nation to be paid from the court fund.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 427. Traditional Custodian's and Grandparents Rights**

(a) No dispositional order or decree, including termination of parental rights and adoption, shall divest the child's traditional custodians or grandparent of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so unless those rights and duties have been extinguished in a proceeding in which the individual was a party. Provided: that adoptive traditional custodians shall also succeed to these rights and duties.

(b) The rights and duties of the traditional custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 428. Orders for Support**

(a) Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Nation, or take other reasonable action to provide support for the child.

(b) In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodian's means, after a hearing, whether the child has been placed in his own home or elsewhere.

(c) When the Nation, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispense by Court order to that agency or the Nation as may be necessary by law or appropriate in the circumstances. In all cases of placement with a particular family, the contribution shall be paid to that family by the Court Clerk subject to the supervision of the Court to prevent waste or misuse of such funds.

(d) Child support calculations shall be based on the formula utilized by the courts of the State of Oklahoma.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER FIVE**

### **CHILD ABUSE**

#### **Section 501. Legislative Purpose**

The General Council hereby declares that the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Chapter it is the intent of the Nation to protect the children within the jurisdiction of the Nation and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Nation that the various federal, state and Tribal medical, mental health, education and social service agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this Chapter.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 502. Definitions**

As used in this Chapter, unless the context otherwise requires:

(a) “Abuse” or “child abuse or neglect” means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

- (1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death and the circumstances indicate that such condition or death may not be the product of an accidental occurrence;
- (2) Any case in which child is subject to sexual assault or molestation;
- (3) Any case in which the child’s parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take; and
- (4) In all cases, those investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a reasonable exercise of parental discipline.

(b) “Child protection team” means a multidisciplinary team consisting, as appropriate, of a physician, a representative of the Juvenile Court, a representative of the Law Enforcement Agency or other appropriate law enforcement agency, a mental health agency representative, a representative of the Bureau of Indian Affairs Social Services Department, a representative of the State social services department, the Prosecuting Attorney, a representative of the local school district, and one or more representatives of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three (3) persons. The role of the child protection team shall be advisory only.

(c) “Social Services Department” means the Nation’s Indian Child Welfare

Department, or, where appropriate, the Bureau of Indian Affairs Social Services Department.

(d) “Law Enforcement Agency” generally means the Seminole Nation Lighthorse Police Department unless circumstances warrant the involvement of the Bureau of Indian Affairs police department, a police department of an incorporated municipality or the County Sheriff.

(e) “Neglect” means acts which can reasonably be construed to fall under the definition of “child abuse or neglect” as defined in subsection (a) of this section.

(f) “Receiving agency” means the department or law enforcement agency first receiving a report of alleged child abuse.

(g) “Responsible person” means a child’s parent, legal guardian, or custodian or any other person responsible for the child’s health and welfare.

(h) “Unfounded report” means any report made pursuant to this Chapter which is not supported by some credible evidence.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 503. Person Required To Report Child Abuse or Neglect**

(a) Any person specified in subsection (b) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Social Services Department or Law Enforcement Agency.

(b) Persons required to report such abuse or neglect or circumstances or conditions which might reasonably result in abuse or neglect shall include any:

- (1) Physician or surgeon, including a physician in training;
- (2) Child health associate or community health representative (CHR);
- (3) Medical examiner or coroner;
- (4) Dentist;
- (5) Osteopath;
- (6) Optometrist;

- (7) Chiropractor;
- (8) Chiropodist or podiatrist;
- (9) Registered nurse or licensed practical nurse;
- (10) Hospital personnel engaged in the admission, care, or treatment of patients;
- (11) School official or employee;
- (12) Social worker or worker in a family care home or child care center;
- (13) Mental health professional;
- (14) Any law enforcement personnel; and
- (15) The Prosecuting Attorney or his assistants.

(c) In addition to those persons specifically required by this Section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Law Enforcement Agency or the Social Services Department.

(d) Any person who willfully violates the provisions of this Section:

- (1) Shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00); and
- (2) Shall be liable for monetary damages approximately caused by the violation.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 504. Required Report of Postmortem Investigation**

(a) Any person who is required to report known or suspected child abuse or neglect that has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate Law Enforcement Agency and to the appropriate coroner or medical examiner. The Law Enforcement Agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Law Enforcement Agency, the Prosecuting Attorney, and the Social Services Department.

(b) The Social Services Department shall forward a copy of such report to the central registry.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 505. Evidence of Abuse**

(a) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglect may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child or other medical test used for gathering evidence of abuse.

(b) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to at least one of the following: Prosecuting Attorney, Social Services Department, or Law Enforcement Agency.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 506. Temporary Protective Custody**

The Chief Judge of the District Court shall be responsible for making available a person appointed by the Chief Judge, who may be the Juvenile Judge, a Magistrate, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the Juvenile Division of the Court when no Judicial Officer is present in the Court, to issue written or verbal temporary protective custody orders, or in the alternative or in addition thereto, the Chief Judge may enter his general order detailing the procedure to be used in taking children into custody on an emergency basis when no Judge or Magistrate is present at the Court. These orders may be requested by the Social Services Department, a tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician who has before him a child he reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstances or the condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The appropriate Social Services Department shall be notified on such action immediately by the Court appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody under this Section shall not exceed seventy-two hours notwithstanding any provision of law to the contrary.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 507. Reporting Procedures**

(a) Reports of known or suspected child abuse or neglect made pursuant to this Chapter shall be made immediately to the Social Services Department or law enforcement agency and shall be followed promptly by a written report prepared by those agencies. The



receiving agency shall forward a copy of its own report to the central registry on forms supplied by the Social Services Department.

- (b) Such reports, when possible, shall include the following information:
  - (1) The name, address, age, sex, and race of the child;
  - (2) The name and address of the responsible person;
  - (3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
  - (4) The names and addresses of the person believed responsible for the suspected abuse or neglect, if known;
  - (5) The family composition;
  - (6) The source of the report and the name, address, and occupation of the person making the report;
  - (7) Any action taken by the reporting source; and
  - (8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

(c) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Prosecuting Attorney's office and to the Law Enforcement Agency.

(d) A written report from persons or officials required by this Chapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 508. Action Upon Receipt of Report**

(a) The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concerns of such investigation shall be the protection of the child.

- (b) The investigation, to the extent that it is reasonably possible, shall include:
  - (1) The nature, extent, and cause of the abuse or neglect;
  - (2) The identity of the person responsible for such abuse or neglect;

- (3) The names and conditions of any other children living in the same place;
- (4) The environment and the relationship of any children therein to the person responsible for the suspect abuse or neglect; and
- (5) All other data deemed pertinent.

(c) The investigation shall, when reasonably possible, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglect. If admission to the child's place of resident cannot be obtained, the Juvenile Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

(d) The Social Services Department shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The Social Services Department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Social Services Department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Social Services Department shall provide for persons to be continuously available to respond to such reports. The Nation, other Indian Tribes and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Social Services Department or to have such arrangements made through agreements with local law enforcement agencies.

(e) Upon receipt of a report, if the Social Services Department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Law Enforcement Agency is necessary for the protection of the child or other children under the same care, the Law Enforcement Agency and the Prosecuting Attorney shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with the Nation's laws.

(f) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Social Services Department in order to refer the case for investigation. If the local Law Enforcement Agency is unable to contact the Social Services Department, it shall make a complete investigation and may request the Prosecuting Attorney to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The Law Enforcement Agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Social Services Department.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 509. Child Protection Teams**

It is the intent of this legislation to encourage the creation of one (1) or more child protection teams. The Chief Judge of the District Court shall have responsibility for swearing into office the child protection team.

(a) The child protection teams shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(b) At each meeting, each member of the child protection team shall be provided with all available records and reports on each case to be considered.

(c) The public, in a non-participatory role, shall be permitted to attend those portions of child protection team meetings concerned with mandatory team discussions of public and private agencies' responses to each report of child abuse and neglect being considered by the team, as well as the team's recommendations related to public agency responses. In all its public discussions, the team shall not publicly disclose the names or addresses and identifying information relating to the children, families, or informants in those cases.

(d) At the beginning of the public discussion of each case, a designated team member shall publicly state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect or no abuse or neglect; whether the child is an infant, a toddler, a preschool or school aged child, or a teenager and the sex of the child; the date of the initial report and the specific agency to which the report was made; and the dates of subsequent reports to specific social service agencies, law enforcement agencies, or other agencies. In no case shall the informant's name or other identifying information about the informant be publicly revealed. The teams shall also state publicly whether the child was hospitalized and whether the child's medical records were checked.

(e) At this public session, and immediately after any executive sessions at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each report of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with provisions of this Chapter, and shall publicly report non-identifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(f) After this mandatory public discussion of agency responses, the child protection team shall go into executive session upon the vote of a majority of the team members to consider identifying details of the case being discussed, to discuss confidential reports, including but not limited to the reports of physicians and psychiatrists, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs. The teams shall state publicly, before going into executive session, its reasons for doing so. Any recommendations based on information presented in the executive sessions shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

(g) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

(h) The teams shall make a report of its recommendations to the Social Services Department with suggestions for further action or stating that the team has no recommendations or suggestions. The Social Services Department may cooperate with other Indian Tribes and state and federal agencies in meeting the requirements of this subsection.

(i) Each member of the team shall be appointed by the agency he represents, and each team member shall serve at the pleasure of the appointing agency; except that the director of the Social Services Department shall appoint the representatives of the lay community, and shall actively recruit all interested individuals and consider their applications for appointment as lay community representatives on the team.

(j) The director of the Social Services Department or his designee shall be deemed to be the coordinator of the child protection team.

(k) The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigatory report and all relevant materials to the child protection team as soon as they become available. The child protection teams shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety (90) days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the Social Services Department for that purpose.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 510. Immunity From Liability**

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs, X-rays or other medical tests used to gather evidence of abuse, or the placing in temporary custody of a child pursuant to this Chapter or otherwise performing his duties or acting pursuant to this Title, shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs, X-rays or other medical tests used to gather evidence of abuse, and any person who has legal authority to place a child in protective custody shall be presumed.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 511. Child Abuse and Child Neglect Diversion Program**

(a) The Prosecuting Attorney, upon recommendation of the Social Services Department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the Social Services Department and the Prosecuting Attorney. If a person is so diverted from the criminal justice system, the Prosecuting Attorney shall not file charges in connection with the case if the person participates to the satisfaction of the Social Services Department and the Prosecuting Attorney in the diversion program offered.

(b) The initial diversion shall be for a period not to exceed two (2) years. This diversion period may be extended for one (1) additional one-year period by the Prosecuting Attorney, if necessary. Decisions regarding extending diversion time period shall be made following review of the person diverted by the Prosecuting Attorney and the Social Services Department.

(c) If the person diverted successfully completes the diversion program to the satisfaction of the Social Services Department and the Prosecuting Attorney, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(d) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 512. Evidence Not Privileged**

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Chapter.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

### **Section 513. Court Proceedings: Guardian Ad litem**

(a) In any proceeding initiated pursuant to this Section, the Court shall name as respondents all persons alleged by the petition to be legal or actual physical custodians or guardians of the child. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents.

(b) The Court, in every case filed under this Chapter may appoint, at no fee, a guardian ad litem, for the child, at the first appearance of the case in court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this Chapter and with reports of any examination of the responsible person made pursuant to this section. The Court or the social services worker assigned to the case shall advise

the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

(c) If the prayer of the petition is granted, the costs of the proceedings, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent.

(d) It is not necessary that the guardian ad litem be an attorney. [HISTORY:

Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 514. Central Registry**

(a) There shall be established a central registry of child protection in the Social Services Department for the purpose of maintaining a registry of information concerning each case of child abuse reported under this Chapter.

(b) The central registry shall contain but shall not be limited to:

- (1) All information in any written report received under this Chapter;
- (2) Record of the final disposition of the report, including services offered and services accepted;
- (3) The plan for rehabilitative treatment;
- (4) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry; and
- (5) Any other information which might be helpful in furthering the purposes of this Title.

(c) The Director of the Social Services Department shall appoint a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his office so that data in the central registry may be made available during non-business hours through the use of computer technology. Such computerized records shall be password coded and only department personnel, judges, and law enforcement personnel shall have access to the password.

(d) After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in Section 503(b) and is a suspected victim of child abuse.

The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a Prosecuting Attorney or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

(e) Unless an investigation of a report conducted pursuant to this Chapter determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the Social Services Department or the Law Enforcement Agency.

(f) In all other cases, the record of the reports to the central registry shall be sealed no later than ten (10) years after the child's eighteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the department and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

(g) At any time, the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

(h) At any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses to act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing before the District Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Chapter. The Social Services Department shall be given notice of the hearing. The burden in such a hearing shall be on the Social Services Department. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

(i) Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this Title shall be given to the subject of such report and to the Social Services Department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

(j) Any person who without authority under this Chapter, willfully permits or who encourages the release of data or information contained in the central registry to persons not

permitted access to such information by this Chapter shall be subject to a civil penalty not in excess of Five Hundred Dollars (\$500.00) and any actual monetary damages sustained.

(k) The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other Tribes, states and the national center on child abuse and neglect.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 515. Confidentiality of Records**

(a) Except as provided in this Section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a Law Enforcement Agency, or the subject of the filing of a formal charge by a Law Enforcement Agency.

(c) Any person who violates any provision of this Section shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00).

(d) Only the following persons or agencies shall be given access to child abuse or neglect records and reports.

- (1) The Law Enforcement Agency or social services department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of the report;
- (2) A physician who has before him a child whom he reasonably suspects to be abused or neglected.
- (3) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;
- (4) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;



- (5) A parent, guardian, legal custodian, or other person legally responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;
- (6) A Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to in camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;
- (7) The central registry of child protection;
- (8) All members of a child protection team;
- (9) The Prosecuting Attorney and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary; and
- (10) Such other persons as a Court may determine, for good cause.

(e) After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (d) of this Section and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is found or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a Prosecuting Attorney or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER SIX FOSTER CARE HOMES**

### **SUBCHAPTER A DEVELOPMENT**

#### **Section 601. Responsibility**

It shall be the responsibility of the Social Services Department to recruit, screen, and license foster homes of children in accordance with this Title.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 602. Licensing Foster Homes**

The Social Services Department, pursuant to rules not inconsistent with this Title, which it shall develop and file with the Council Secretary's office, shall have the authority to license foster care homes for the care of children.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 603. Basic Standard for Foster Families**

In considering Indian foster parents the primary consideration should be the foster parent's capacity to provide love and understanding to a child or children in distress.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 604. Basic Requirements of Foster Families**

Foster families shall meet the following personal criteria:

(a) The age of foster parent(s) shall be a consideration only as it affects their physical capability, flexibility, and ability to care for a specific child;

(b) A written statement from a physician, regarding the foster parent(s) and their children's general health, specific illnesses, or disabilities shall be a routine part of the study evaluation process. Foster parent(s) and all other adults and the children present in the home shall submit a written report verifying that they have taken tuberculin tests and have been found free of disease; other tests may be required as indicated; and

(c) Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 605. Income of Foster Families**

(a) When the agency does not have a plan for paying foster families a salary, it shall determine that the foster family's income is stable and sufficient for the maintenance of the family and reimbursement for the foster family's own expenses.

(b) Employment of foster parent(s) outside the home:

- (1) In two parent homes it is preferable, in most instances, that both foster parents shall not be employed outside the home so that one parent is available for the parenting that the child requires. The agency shall make decisions regarding such situations on the basis of what is the best interest of the child;
- (2) When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans (approved by the agency) for care and supervision of the child after school and during the summer while parent(s) are at work.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 606. Physical Facilities**

(a) Physical facilities of the foster home shall present no hazard to the safety of the foster child.

(b) Foster homes shall meet zoning and housing requirements and/or codes as set by the public safety department for individual family dwellings.

(c) Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located. These standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.

(d) Comfort and privacy:

- (1) It is preferable for no more than two (2) children to share sleeping rooms;
- (2) The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior;

- (3) Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household; and
- (4) Individual space shall be provided for the child's personal possessions.
- (5) This subsection (d) shall apply in all instances except for children under two (2) years of age or when special cultural, ethnic, or socio-economic circumstances exist. Provided, such exceptions must not be to the detriment of the child.

(e) Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.

(f) If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above the requirements, standards, and/or codes.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 607. Family Composition**

(a) Two parents shall be selected in most cases; however, single parents shall be selected when they can more effectively fulfill the needs of a particular child.

(b) The presence of other children (either own or foster), and other adults (i.e. grandparents, aunts, or unrelated persons) shall be taken into consideration in terms of how they might be effected by or have an effect upon another child.

(c) The number and ages of children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster parent(s) ability to meet the needs of all children present in the home, physical accommodations of the home, and especially the effect which an additional child would have on the family as a unit. It is preferable that:

- (1) Foster parent(s) shall care for not more than two infants (under two), including the foster parent(s) own children;
- (2) Foster families should not have more than a total of six (6) children, including foster children and foster parent(s) own children, in the foster home. Exceptions shall be made in order to keep siblings together;
- (3) The age range of the children in a foster home shall be similar to that in a "normal" family in order to lessen competition and comparisons;
- (4) All placement situations shall consider the effect of having some children in the foster home whose parent(s) visit them and other children whose parent(s) do not; and

- (5) A foster home shall not provide placements for more than one agency at a time without a written agreement delineating the responsibilities of all parties involved.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 608. Personal Characteristics**

Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are reflected in the following:

- (a) Psycho-social history, including significant childhood relationships and experiences (parent-child, sibling, or other relationships);
- (b) Role identification and acceptance;
- (c) Reactions to experiences of separation and loss (through death, desertion, etc.);
- (d) Education, employment, and patterns of interpersonal relationships;
- (e) General social, intellectual and cultural levels of the family;
- (f) Level of everyday functioning:
  - (1) Home and money management ability;
  - (2) Daily routine and habits; and
  - (3) Reactions to stress.
- (g) Affect responses (ability to give and receive love, deal with loss, separation and disappointment, etc.);
- (h) Moral, ethical, and spiritual qualities of the family
- (i) Religious affiliation and habits; and
- (j) Hobbies, special interests, skills, and talents.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 609. Foster Parenting Abilities**

As assessment of prospective foster parent(s) parenting ability regarding a specific child shall take into account the following:

- (a) Motivation for application at this time;
- (b) Characteristics and number of children best suited to foster family;
- (c) Existing family relationships, attitudes, and expectations regarding own children and parent-child relationships, especially where such existing attitudes and relationships might affect the foster child;
- (d) Attitudes of significant members of the extended family regarding child placement;
- (e) Ability to accept and love child as he/she is;
- (f) Capacity to absorb the child into family life functioning without undue disruption;
- (g) Capacity of parent(s) to provide for foster child's needs while giving proper consideration to own children;
- (h) Own children's attitudes towards accepting foster child;
- (i) Realistic assessment of positive and negative aspects of foster parenthood;
- (j) Personal characteristics necessary to provide continuity of care throughout child's need for placement;
- (k) Flexibility to meet changing needs over the course of placement;
- (l) Ability to accept child's relationship with own parent(s);
- (m) Ability to relate to neglecting and abusing natural parent(s);
- (n) Special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.);
- (o) Areas in which ongoing social work assistance may be needed; and
- (p) Ability to help a child return home or be placed for adoption and gain satisfaction from the experience.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **SUBCHAPTER B**

### **FOSTER HOME LICENSING COMMISSION**

#### **Section 610. Citation**

This Subchapter may be cited as the Seminole Foster Home Licensing Act of 2008.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 611. Purpose**

It being necessary to strengthen tribal government by licensing and regulating certain conduct within the Tribal jurisdiction, to provide support services to families and children, to provide child welfare services, and to provide foster home care services in order for the Seminole Nation to efficiently and effectively exercise its confirmed governmental responsibilities to children within the Indian Country subject to the jurisdiction of the Seminole Nation, the purpose of this Title is to provide simple, fair, straightforward procedures to provide for the licensing and regulation of foster home care, and to provide child welfare services.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 612. Foster Home Licensing Authority Delegated**

(a) Pursuant to the authority vested in the General Council of the Seminole Nation by Section A of Article V of the Nation's Constitution, and through its authority and duty to provide for the health, safety, morality, and welfare of all persons within the jurisdiction of the Nation, there is hereby established and created a public body politic to be known as the Seminole Foster Home Licensing Commission which shall be an agency of the Seminole Nation, subordinate to the General Council, and possessing all powers, duties, rights, and functions as herein or hereafter provided by Tribal law.

(b) In any suit, action, or proceeding involving the validity or enforcement of, or relating to any of its activities, the Foster Home Licensing Commission shall be conclusively deemed to have become authorized to transact business and exercise its powers upon proof of adoption of this ordinance. A copy of this ordinance, duly certified by the Secretary of the Nation, shall be admissible in evidence in any suit, action or proceeding. The Courts of the Seminole Nation shall take judicial notice of this Title.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 613. Declaration of Need and Legislative Findings**

It is hereby declared and found:

(a) That there exists a need within the jurisdiction of the Seminole Nation for the licensure of foster homes to provide temporary foster care to those minor children within the jurisdiction of the Nation for whom foster care has been deemed necessary and appropriate.

(b) That the necessary standards with which such foster homes must comply have been previously adopted and approved by the Seminole Nation.

(c) That the Seminole Nation has or may enter into a duly approved foster care agreement with the State of Oklahoma under which the State agrees to make foster care payments to those foster homes approved and licensed by the Nation.

(d) That the Indian Child Welfare Program of the Seminole Nation has been designated and authorized to provide child welfare services within the jurisdiction of the Seminole Nation.

(e) That the Foster Home Licensing Commission of the Seminole Nation has been established to provide support services to families and children within the jurisdiction of the Seminole Nation notwithstanding the fact the child may be within or without the territorial jurisdiction.

(f) That the operation of the Foster Home Licensing Commission serves an essential governmental function of the Seminole Nation and that delegating to and vesting in the Foster Home Licensing Commission the authority to license foster homes is in the public interest.

(g) That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 614. Purposes**

In addition to the general purposes expressed in Section 611 of this Subchapter, the Seminole Foster Home Licensing Commission shall be organized and operated for the purpose of:

- (a) Developing and providing foster home care services for children;
- (b) Providing a foster home care environment utilizing minimum standards and guidelines;
- (c) Administering and enforcing all duly adopted juvenile laws, regulations and agreements;

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]



## **Section 615. Definitions**

The following terms whenever used or referred to in this ordinance, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (a) “Act” means the Seminole Foster Home Licensing Act.
- (b) “Agreement” means the Foster Care Agreement between the Seminole Nation and the State of Oklahoma.
- (c) “General Council” means the General Council of the Seminole Nation.
- (d) “Foster Home Licensing Commission” means the Foster Home Licensing Commission of the Seminole Nation.
- (e) “Foster Home” means a home licensed to provide foster care within the jurisdiction of the Seminole Nation.
- (f) “Indian Child Welfare Worker” means a worker or juvenile officer authorized to provide Indian child welfare services within the jurisdiction of the Seminole Nation.
- (g) “License” means the certificate issued by the Nation’s Foster Home Licensing Commission indicating that the home to which it is issued meets the foster care standards of the Nation and is entitled to receive payments as provided in the Agreement. A license is a privilege from the Nation to provide foster home care to children in the Nation’s jurisdiction.
- (h) “Standards” means the qualifications of a home making it a suitable provider of foster care as previously established by the Nation and incorporated into the Agreement.
- (i) “Provisional License” means a temporary license issued by the Foster Home Licensing Commission of the Nation pursuant to those terms and conditions as prescribed by the Commission.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 616. Board Created: Number**

The affairs of the Foster Home Commission shall be managed by a Board of Directors composed of three (3) persons.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 617. Appointment of Board Members**

The Foster Home Commission Board Members shall be appointed, and may be reappointed by the Chairman with the advice and consent of the General Council expressed by resolution. A resolution of the General Council signed by the Chairman, attested to by the Council Secretary,

as to the appointment or reappointment of any Board Member shall be conclusive evidence of the due and proper appointment of the Board Member.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 618. Qualifications of Board Members**

(a) A Board Member may be a member or non-member of the Nation, provided that the majority of the Board shall be comprised of Indians with at least one member of the Seminole Nation.

(b) No person shall be barred from serving on the Board because he is an employee or officer of the Indian Child Welfare program or the Nation, has a contractual relationship with the Nation, or operates a foster home under a state or tribal license. However, no such Board Member shall be entitled or permitted (except in his capacity as a member of the public or as an employee), to be counted or treated as a member of the Board concerning any matter involving his individual rights, obligations, or status.

(c) Each Board Member shall be at least twenty-one (21) years of age and legally capable of entering into a binding contract.

(d) No person who has been finally convicted in any court of competent jurisdiction of a felony, or other crime involving child abuse, embezzlement, fraud, or moral turpitude shall serve on the Board of Directors.

(e) Each Board Member shall take an oath to support and defend the Constitution, laws, rules and regulations of the Seminole Nation.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 619. Term of Office**

The term of office shall be for three (3) years and staggered, and the first appointment of Foster Home Commission members shall be for terms of one (1), two (2), and three (3) years for the respective members. Thereafter, all appointments shall be for three-year terms beginning from the date following the regular expiration of a particular seat on the Board, except that in the case of a vacancy occurring prior to the expiration of a regular term, an appointment to that seat shall be only for the length of the unexpired term. Each member shall hold office until a successor has been appointed and has qualified.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 620. Officers**

The Board of Directors shall elect from its members a Chairman, a Vice-Chairman, and a Secretary. The officers shall serve as officers at the pleasure of the Board of Directors.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 621. Quorum**

Two (2) members of the Foster Home Commission shall constitute a quorum.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 622. Duties of Officers**

(a) The Chairman shall preside at all meetings of the Board, and shall generally be responsible for the efficient and orderly functions of the Seminole Foster Home Licensing Commission.

(b) The Vice-Chairman shall assume the duties of the Chairman in his absence, or upon his failure, neglect, or refusal to undertake the duties required or delegated him by law.

(c) The Secretary shall keep complete and accurate records of all meetings and actions of the Board. A certified copy of the record of each meeting, upon approval by the Board, shall be filed in the Council Secretary's office no more than fifteen (15) days after Board approval of that record.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 623. Meetings**

(a) Regular meetings of the Board shall be held at such regular times, dates, and places as may be established by the Board. A copy of the schedule of regular meetings of the Board shall be filed with the Council Secretary no later than twenty (20) days prior to the date of the regular meeting.

(b) Special meetings of the Board may be held at the call of the Chairman and held at such time, date and place as may be announced. Notice of such meetings shall be given to the Council Secretary as soon as is practicable.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 624. General Powers**

The Seminole Foster Home Licensing Commission shall be generally charged with the administration and enforcement of all Tribal laws, rules, regulations, procedures, and any agreements involving foster home care. Incidental to such authority, the Commission shall have the power to:

- (a) Issue licenses to foster care homes within the jurisdiction of the Seminole Nation;
- (b) Suspend or revoke licenses issued to foster care homes within the jurisdiction of the Seminole Nation;
- (c) Administer oaths, conduct hearings, and by subpoena to compel the attendance of witnesses and the production of any records or other information relating to the administration or enforcement of this Act;
- (d) Make, prescribe, promulgate, and enforce written rules, regulations, stamps and documents not inconsistent with this Act to provide for its internal operational procedures, or for the filing of any reports to the Commission, or as shall be necessary for the effective performance of its duties and functions; and
- (e) Make and present recommendations to the General Council regarding this Act, foster home care services, any agreements, or any improvements needed in providing such care to children.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 625. Applications**

- (a) It shall be the responsibility of the Indian Child Welfare Program of the Seminole Nation, with the advice and consent of the Foster Home Licensing Commission to develop and distribute application forms by which interested individuals or families may apply for licensure as foster care homes.
- (b) Each application form shall be accompanied at distribution with a copy of the standards for licensure.
- (c) Completed applications may be returned by the applicant to the Indian Child Welfare Program or to a member of the Foster Home Licensing Commission.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 626. Application Verification**

Upon receipt of a completed application for licensure, it shall be the responsibility of the Indian Child Welfare Worker to verify the information contained in the application. This verification shall include, but is not limited to:

- (a) Checking all references provided in the application;
- (b) Making at least one visit in the home of the applicant individual or family; and
- (c) Any other verification procedures as determined by the Foster Home Licensing Commission.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **Section 627. Consideration by Foster Home Licensing Commission**

(a) Upon completion of the application verification process, the Indian Child Welfare Worker shall recommend to the Foster Home Licensing Commission whether or not a license should be issued.

(b) Upon receipt of the recommendation from the Indian Child Welfare Worker the Foster Home Licensing Commission shall take one of three (3) actions:

- (1) Issue a foster home license; or
- (2) Deny issuance of a foster home license; or
- (3) Postpone consideration of licensure pending the receipt of additional information.

(c) Any action to issue a foster home license shall require the unanimous vote of the Foster Home Licensing Commission present at the meeting at which the action is taken.

(d) Any failed action to issue a foster home license or to postpone consideration pending receipt of additional information shall be deemed a denial by the Foster Home Licensing Commission present.

(e) If the Foster Home Licensing Commission denies issuance of a license to any applicant, the applicant shall be informed, in writing, of the reason(s) for the denial and what specific action(s) must be taken to become eligible for licensure.

(f) If the Foster Home Licensing Commission postpones consideration of licensure pending the receipt of additional information, the Foster Home Licensing Commission shall inform the Indian Child Welfare Worker as to what additional information it requires. The additional information shall be obtained by the Indian Child Welfare Worker and the application considered by the Foster Home Licensing Commission as soon as is practicable.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 628. Proceedings and Records Confidential**

The Foster Home Licensing Commission shall meet in executive session, with only members of the Commission and the Indian Child Welfare Worker present, to consider the issuance of any foster home license. The discussions and actions of the Foster Home Licensing Commission records of the meeting during which licensure was considered and all licensure application materials are confidential and shall not be disclosed in any manner.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 629. Issuance of License**

(a) Upon approval for licensure as herein provided, the Foster Home Licensing Commission shall issue a Foster Home License to the applicant. Said license shall contain but is not limited to the following:

- (1) The name of the individual or family to which the license is issued;
- (2) The address of the residence of the individual or family to which the license is issued;
- (3) The date the license is issued and the period of the license's duration;
- (4) The name of the licensing authority: THE FOSTER HOME LICENSING COMMISSION OF THE SEMINOLE NATION; and
- (5) The signature of the Chairperson and Secretary of the Foster Home Licensing Commission or their designees.

(b) Upon issuance of a license as a foster home, the licensee shall receive in writing a copy of all information regarding their duties, responsibilities and rights as defined by the Nation, the Foster Home Licensing Commission or as required by the Agreement.

(c) Licenses of foster homes as herein provided shall be for a time period of two (2) years. Provisional licenses shall be for six (6) months.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 630. Necessity of Maintaining Standards**

Having been found to meet the standards established by the Seminole Nation as necessary to be eligible for licensure as a foster home, it is the responsibility of each licensed foster home to ensure that it maintains those standards.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 631. Surrender of Foster Home License**

Any foster home licensed by the Seminole Nation as provided herein may voluntarily surrender said license. Such voluntary surrender of a foster home license shall not prejudice the applicant from future consideration for foster care licensure.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 632. Suspension of Foster Home License**

(a) The Foster Home Licensing Commission shall have the authority to suspend the license of any foster home for failure to maintain the standards established by the Seminole Nation.

(b) A foster home whose license is suspended shall be provided, in writing, with the specific action(s) necessary for the suspension of the license to be lifted and the time period in which such action(s) must be taken.

(c) A foster home whose license is suspended and which does not take the necessary action(s) to have the suspension lifted within the time period specified may have its license revoked.

(d) The decision to suspend a foster home license may be made by a simple majority of the Foster Home Licensing Commission members present.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 633. Revocation of Foster Home License**

(a) The Foster Home Licensing Commission shall have the authority to revoke any foster home license as issued hereunder for any one or more of the following reasons:

- (1) Failing to maintain the standards for foster homes established by the Seminole Nation;
- (2) Failing to take the action(s) specified as necessary to lift the suspension of its license in the time period provided;
- (3) Making misrepresentations to the Foster Home Licensing Commission in its application for licensure and/or throughout the license monitoring process; or

- (4) Conviction of the licensee or a member of the licensee's household in a court of competent jurisdiction of any felony or other crime involving violence, dishonesty or moral turpitude.

(b) Revocation of a foster home license shall require a full hearing before the Foster Home Licensing Commission pursuant to the following procedures:

- (1) The licensee shall be given ten (10) calendar days written notice that a hearing to revoke the licensee's license is scheduled. Said licensee may appear at the hearing with or without the assistance of legal counsel or lay advocate;
- (2) Said notice shall inform the licensee of the specific reason(s) that revocation of its foster home license is being considered;
- (3) The licensee shall be provided with the opportunity to appear before the Foster Home Licensing Commission to explain why the licensee's license should not be revoked;
- (4) Failure to appear by the licensee before the Foster Home Licensing Commission after notice as prescribed herein has been provided shall not delay the action of the Foster Home Licensing Commission and the Commission is authorized to revoke the foster home license under such circumstances in the absence of the licensee; and
- (5) The decision to revoke a foster home license pursuant to these procedures may be made by a simple majority of the Foster Home Licensing Commission members present.

(c) Revocation of a foster home license as herein provided shall render the individual or family whose license is so revoked ineligible for licensure and further consideration for foster home licensure by the Seminole Nation for a period of not less than two (2) calendar years.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

#### **Section 634. Proceedings and Records Confidential**

All discussions and materials relating to surrender, suspension or revocation of foster home licenses as provided in this Section shall be considered confidential and shall be handled in accordance with Section 628 of this Chapter.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]



**Section 635. Appeal to the District Court**

(a) Any applicant who feels that denial of licensure by the Foster Home Licensing Commission was unfair or unjust, or any licensee who feels that its license was unfairly suspended or revoked by the Foster Home Licensing Commission may appeal the action to the District Court.

(b) Notwithstanding the confidentiality of records and proceedings of matters covered by this Act, upon written request of the applicant or licensee the Foster Home Licensing Commission shall forward all records regarding the action being appealed to the District Court for its consideration of the appeal.

(c) The decision of the District Court regarding the appeal of actions of the Foster Home Licensing Commission shall be final and shall be appealable as in other cases.

(d) Procedures for the appeal of actions of the Foster Home Licensing Commission shall be determined by the General Council of the Seminole Nation.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

**Section 636. Powers of Court Not Diminished**

Nothing herein contained shall diminish or otherwise abridge the power or authority of the District Court of the Seminole Nation to take jurisdiction of or enter any order in any matter relating to or arising out of the subject matter covered by this Act which it would otherwise be competent to address.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA  
February 2, 2012.]

## **CHAPTER SEVEN**

### **ADOPTIONS**

#### **Section 701. Jurisdiction over Adoptions**

(a) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any person who resides or is domiciled within the jurisdiction of the court, is unmarried, less than eighteen years of age, and either:

- (1) A member of an Indian Tribe, or
- (2) Is eligible for membership in an Indian Tribe, and is the biological child of a member of an Indian Tribe, or
- (3) Whose case has been transferred to the Juvenile Division of the District from the courts of a state, or Indian Tribe which has assumed jurisdiction over said child; or
- (4) The adoption of any adult Indian who resides or is domiciled within the jurisdiction of the Court.

(b) The Juvenile Division of the District Court shall have concurrent jurisdiction with the court of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:

- (1) A bona fide resident of or domiciled within the jurisdiction of the Court, or
- (2) Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile, upon approval of the Court, or
- (3) A member of the Nation.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 702. Purpose of Adoptions**

The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Title shall be so recognized by every agency and level of the Government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 703. Types of Adoptions**

There shall be three types of adoptions recognized by the Nation, namely:

- (a) Statutory adoptions under entered into pursuant to Subchapter A of this Chapter;
- (b) Statutory adoptions under the laws of another Indian Tribe, State, or Nation having jurisdiction over the parties and the subject matter; and
- (c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Common Law until such time as the proper procedures for such adoptions are written down as a part of the Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Statute, traditional adoptions create a particular stated family relationship between person for all purposes other than enrollment and the probate of decedent's estates.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 704. In Camera Determination of Enrollment Eligibility**

Whenever a parent, whether biological or adoptive, has expressed a desire that the name of the parent or the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment as a citizen and member of the Nation, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information in camera, and to enter its order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non- identifying enrollment eligibility criteria. In doing so, the Court shall be provided with a complete Tribal roll for the necessary period(s) and shall seal all records received to maintain their confidentiality of the parties. If the Court determines that such child is eligible for enrollment, it shall enter its order declaring said fact and the Nation's enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines that such child is not eligible for enrollment, it shall enter its order accordingly, and the Nation's enrollment officers shall accept such order as proof of the ineligibility of said child and refuse to enroll the child unless other or further qualifications for enrollment are shown.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

## **SUBCHAPTER A STATUTORY ADOPTIONS**

### **Section 705. Eligibility for Statutory Adoption**

Every child within the Court's jurisdiction at the time a petition for adoption is filed, may be adopted subject to the terms and conditions of this Subchapter.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 706. Eligibility to Adopt by Statutory Process**

The following persons are eligible to adopt a child pursuant to this Subchapter, and subject to the placement preferences of Section 410 of this Title:

- (a) A husband and wife jointly;
- (b) Either the husband or wife if the other spouse is a parent of the child;
- (c) An unmarried person who is at least twenty-one (21) years old;
- (d) A married person who is legally separated from the other spouse and at least twenty-one (21) years old; or
- (e) In the case of a child born out-of-wedlock, its unmarried father or mother.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

### **Section 707. Consent to Statutory Adoption**

(a) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court by:

- (1) Both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree;
- (2) A parent less than sixteen (16) years of age may give their consent only with the written consent of one of that minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court; or
- (3) If both parents are deceased, or if their parental rights have been terminated by judicial decree, then the traditional custodian having physical custody of said child for the preceding six (6) month period, or a person or the executive head of an agency having custody of the child by

judicial decree with the specific authority, granted by the Court, to consent to the adoption of the child.

(b) Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

(c) Any consent given prior to or within ten (10) days after the birth of a child shall not be valid.

(d) Any consent given for the adoption of, or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 708. Voluntary Relinquishment**

Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of Section 712 (b), (c), and (d) of this Subchapter, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the Juvenile Division of the District Court with notice to the Social Services Department, Prosecuting Attorney, traditional custodians, and the Parent(s) not a petitioner. The traditional custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 709. When Consent of Parents Unnecessary**

Adoption of a child may be decreed without the consent required by Section 712 of this Subchapter only if the parents, or the traditional custodians having custody if the parents be deceased, have:

(a) Had their parental or custodial rights terminated by a decree of a Court of competent jurisdiction; or

(b) Been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority; or

(c) For a period of twelve (12) months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:

- (1) In substantial compliance with any decree of a Court of competent jurisdiction ordering certain support to be contributed; or
- (2) If no court order has been made ordering certain support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody;

(d) Been finally adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority. In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 710. Notice and Hearing for Adoptions Without Consent**

Before the Court hears a petition for adoption without the consent of the parents as provided by Section 714 of this Subchapter, except proceedings pursuant to Section 714(a), the person having authority to consent to the adoption, or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain and the application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 711. Consent of Child**

Whenever a child is of sufficient maturity and understanding the Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

**Section 712. Petition**

A Petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

- (a) The full names, ages, and places of residence of the Petitioners, and, if married, the place and date of their marriage;
- (b) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any;
- (c) When and from whom the petitioners acquired or intend to acquire physical custody of the child;
- (d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known;
- (e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known;
- (f) The name used for the child in the proceeding, and, if a change in name is desired, the new name;
- (g) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child;
- (h) A full description and statement of the value of all property owned or possessed by the child;
- (i) The facts, if any, which excuse the consent of the parents or either of them to the adoption;
- (j) Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption; and
- (k) The facts which bring the child within the jurisdiction of the Court.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

**Section 713. Investigation**

- (a) Upon the filing of a petition for adoption, the Court shall order an investigation to be made:

- (1) By the agency having custody or legal guardianship of the child, or Department in other cases, by the State, Bureau of Indian Affairs, or Tribal; and
- (2) By a person qualified by training or experience, designated by the Court.

and shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from the issuance of the order for investigation, unless time therefore is extended by the Court.

(b) Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether the child is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the court is specifically authorized to exercise judicial knowledge.

(c) The Court may order agencies named in Subsection (a) of this Section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.

(d) Where the adopting parent is the spouse of a parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six (6) months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.

(e) Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the Social Services Department and the Prosecuting Attorney.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 714. Adoption Hearing**

At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption may enter a final decree of adoption, or may place the child in the legal custody of



the petitioner for a period of not more than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the tribal agencies, Federal agencies, or other agencies to provide services to assist in the placement and the care of the child, or, in ease of need, refer the matter to the Social Services Department and Prosecuting Attorney for the purpose of determining whether an involuntary juvenile petition should be filed.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 715. Report and Final Decree of Adoption**

If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months of the child's placement in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 716. Contents of Adoption Order**

The final order of adoption shall include such facts as are necessary to establish that: the child is within the jurisdiction of the court; eligible for adoption; the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings; the new name of the child, if any; and that the relationship of parent and child exists between the petitioners and the child.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 717. Effect of Final Decree of Statutory Adoption**

(a) After a final decree of adoption pursuant to this Subchapter is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parent, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).

(b) After a final decree of adoption pursuant to this Subchapter is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in the Nation by virtue of his birth to said natural parents.

(c) Unless the traditional custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consent or has their rights terminated, the Court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 718. Records and Hearing Confidential**

Unless the court shall otherwise order:

(a) All hearings held in proceedings under this Subchapter shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including traditional custodians, representatives of the Social Services Department when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, traditional custodians, and the Social Services Department.

(b) All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

- (1) Upon order of the court for good cause shown;
- (2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records;
- (3) The traditional custodian and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parent request anonymity, by affidavit, the traditional

custodians and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the court deems such request in the best interest of the child; or

- (4) For the purpose of obtaining the enrollment of the child with another Indian Tribe, the Court may, upon request of an enrollment officer of that Tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Tribe subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents, have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Tribe for an in camera review only, or allow such Judge to review the record in the District Court, in camera, for the purpose of said Judge certifying to his Tribe that the child is eligible for membership in that Tribe.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 719. Certificates of Adoption**

(a) For each adoption or annulment of adoption, the Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(b) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the appropriate jurisdiction.

(c) One certified copy of the form certificate, petition, and decree of adoption may be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judges certificate showing:

- (1) The original and adoptive name and tribal affiliation of the child;
- (2) The names, addresses, tribal affiliation and degree of blood when known of the biological parents;
- (3) The names and addresses of the adoptive parents;
- (4) The identity of agencies having filed information relating to the adoptive placement; and

- (5) Any affidavit of the biological parent requesting that their identity remain confidential.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 720. Foreign Decree**

When the relationship of parent and child has been created by a decree of adoption by any Court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by section 722 of this Chapter.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 721. Adoption of Adults**

(a) An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth in Title 19. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

(b) Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

#### **Section 722. Appeals**

An appeal to the Supreme Court may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals.

[HISTORY: Enacted by TO 2009-04, December 5, 2009; approved by BIA February 2, 2012.]

**TITLE 20  
LAND USE  
INDEX**

<b>TITLE 20 LAND USE INDEX .....</b>	<b>i</b>
<b>TITLE 20 LAND USE.....</b>	<b>1</b>
<b>CHAPTER ONE OIL AND GAS WELL DRILLING .....</b>	<b>1</b>
Section 101. Permits .....	1
Section 102. Drilling Specifications .....	1
Section 103. Application for Permit .....	1
Section 104. Deposit.....	2
Section 105. Bond .....	2
Section 106. Location of Well .....	3
Section 107. Fence.....	3
Section 108. Gas Motors.....	3
Section 109. Pipe Lines .....	3
Section 110. Pits .....	3
Section 111. Condition of Premises .....	3
Section 112. Abandonment; Removal of Equipment .....	4
Section 113. Common Meaning of Words Governs.....	4
Section 114. Separate Validity of Provisions.....	4
<b>CHAPTER TWO SEMINOLE NATION PUBLIC WORKS ORDINANCE.....</b>	<b>5</b>
Section 201. Title and Date.....	5
Section 202. Purpose .....	5
Section 203. Policy .....	5
Section 204. Jurisdiction.....	5
Section 205. Definitions .....	5
Section 206. Establishment of Utility Program.....	7
Section 207. Utility Board .....	7
Section 208. Utility Board - Operating organization.....	7
Section 209. Utility Board - Powers and Responsibilities .....	7
Section 210. Utility Board - Membership .....	9
Section 211. Term of Office .....	9
Section 212. Utility Board - Appointment .....	9
Section 213. Utility Board - Vacancies .....	10
Section 214. Officers .....	10

Section 215.	Duties of the Officers .....	10
Section 216.	Meetings .....	11
Section 217.	Quorum and Voting.....	11
Section 218.	Meeting Agenda .....	11
Section 219.	Compensation .....	12
Section 220.	Public Hearings .....	12
Section 221.	Management Personnel.....	12
Section 222.	Annual Budget .....	12
Section 223.	User Fee Schedule .....	12
Section 224.	Fiscal Year .....	13
Section 225.	Depository.....	13
Section 226.	Investments .....	13
Section 227.	Disbursements and Receipts .....	13
Section 228.	Records and Accounts .....	13
Section 229.	Exclusive Use of Funds .....	14
Section 230.	Audit and Reports .....	14
Section 231.	Bonding .....	14
Section 232.	Insurance .....	14
Section 233.	Petty Cash .....	14
Section 234.	Regulations and Policy .....	15
Section 235.	Regulations and Policies: Suspension or Amendment .....	15
Section 236.	Amendments .....	15
Section 237.	Grievances .....	15
Section 238.	Non-Waiver of Sovereign Immunity.....	16
Section 239.	Services Provided.....	16
Section 240.	Water Service .....	16
Section 241.	Meters .....	16
Section 242.	Reconnection of Service .....	17
Section 243.	Public Water Use Requirements .....	17
Section 244.	Obtaining Service Without Authorization .....	17
Section 245.	Future Services.....	18
Section 246.	Maintenance Schedule.....	18
Section 247.	Personnel.....	18
Section 248.	Purchasing.....	18
Section 249.	Equipment .....	18

Section 250.	Inventory and Depreciation.....	19
Section 251.	Public Relations .....	19
Section 252.	Emergency Notification.....	19
Section 253.	Staff Training .....	19
Section 254.	Limits of Responsibility .....	20
Section 255.	Right of Entry - Inspection .....	20
Section 256.	Disruption of Service.....	20
Section 257.	Permits .....	21
Section 258.	Water Shortage - Service Preference.....	21
Section 259.	Unnecessary Waste of Water .....	21
Section 260.	Conservation of Resource.....	22
Section 261.	New Customers Services .....	22
Section 262.	Conditions For Service Payments .....	22
Section 263.	Maintenance; Repairs; Liability.....	22
Section 264.	Customer Termination of Service; Abandonment .....	23
Section 265.	Water Shortages .....	23
Section 266.	Inspections .....	23
Section 267.	Permits .....	23
Section 268.	Cross-Connections .....	24
Section 269.	Hazardous Waste Disposal .....	24
Section 270.	Fee Schedule Establishment .....	24
Section 271.	Notice to Customers .....	24
Section 272.	Billing Responsibility .....	25
Section 273.	Monthly Statement .....	25
Section 274.	Due Date .....	25
Section 275.	Payment Past Due .....	25
Section 276.	Delinquent Account.....	25
Section 277.	Notice of Delinquency.....	25
Section 278.	Advance Deposits.....	26
Section 279.	Authority and Enforcement.....	26
Section 280.	Attachment of Customers Property .....	26
Section 281.	Penalty Schedule .....	26
Section 282.	Sanctions Authorized.....	26
Section 283.	Sanction Guidelines.....	27
Section 284.	Validity, Severability.....	28

Section 285.	Amendments .....	28
Section 286.	Suspension of Chapter .....	28
Section 287.	Emergency Response Plan .....	28
Section 288.	Conflict of Interest.....	28
Section 289.	Use of Roads and Right-of-ways .....	28
Section 290.	Grant Authorization.....	29
<b>CHAPTER THREE SEMINOLE NATION WATER CODE .....</b>		<b>30</b>
<b>SUBCHAPTER 1 GENERAL PROVISIONS.....</b>		<b>30</b>
Section 301.	Declaration of Purposes; Assertion of Authority .....	30
Section 302.	Application of the Code.....	30
Section 303.	Nature of Ownership .....	30
Section 304.	Waters of the Seminole Nation Defined .....	31
<b>SUBCHAPTER 2 NOTICE OF ENACTMENT AND EFFECT .....</b>		<b>32</b>
Section 305.	Notice Required .....	32
Section 306.	Contents of Notice.....	32
Section 307.	Notice-How Given .....	32
<b>SUBCHAPTER 3 WATER RELATED DUTIES OF THE ENVIRONMENTAL PROTECTION OFFICE .....</b>		<b>34</b>
Section 308.	Information Function.....	34
Section 309.	Enforcement Function .....	34
Section 310.	Administrative Function .....	35
Section 311.	Water Reserves.....	36
Section 312.	Water Assessments.....	36
Section 313.	Designations of Local Management Areas .....	36
Section 314.	Large User Water Permits.....	37
Section 315.	Charges for Water Uses .....	37
<b>SUBCHAPTER 4 GUIDELINES FOR ADMINISTRATION .....</b>		<b>38</b>
Section 316.	General Policy Provisions.....	38
Section 317.	Guidelines for Making Most Effective Use of Available Resources .....	39
Section 318.	Additional Policy Guidelines .....	40
<b>SUBCHAPTER 5 DESCRIPTIONS OF USE AND APPLICATIONS FOR PERMIT....</b>		<b>41</b>
Section 319.	Existing Use Inventory .....	41
Section 320.	Description of Use - Required .....	41
Section 321.	Application for Permit - Required.....	41
Section 322.	Description of Use and Application for Permit - Contents.....	41
Section 323.	Interim Permits.....	42



Section 324.	Fees.....	43
Section 325.	Public Notice of Descriptions of Use and Applications for Permit - Initial Notice	43
Section 326.	Public Notice of Applications for Permit - Continuing Operation.....	44
Section 327.	Objections Affecting Descriptions of Use and Applications for Permit.....	44
Section 328.	Form and Contents of Objections.....	44
Section 329.	Reply by Applicant.....	45
Section 330.	Hearings Regarding Issuance of Permits .....	45
Section 331.	Public Comment.....	45
Section 332.	Investigation and Review of Permit Issuance .....	45
Section 333.	Issuance or Denial of Permits .....	46
<b>SUBCHAPTER 6 WATER USE PERMITS .....</b>		<b>47</b>
Section 334.	Form .....	47
Section 335.	Information Contained.....	47
Section 336.	Conditions .....	48
Section 337.	Entry on Land.....	49
Section 338.	Effect .....	49
Section 339.	Revocability .....	50
Section 340.	Modification.....	50
<b>SUBCHAPTER 7 DETERMINATION OF AVAILABILITY AND NEED .....</b>		<b>51</b>
Section 341.	When Proceeding Available .....	51
Section 342.	Purposes.....	51
Section 343.	Notice of Proceeding. ....	51
Section 344.	Environmental Protection Office - Investigation Initiation .....	52
Section 345.	Environmental Protection Office - Information Gathering.....	52
Section 346.	Environmental Protection Office - Report.....	52
Section 347.	Proposed Determination of Availability and Need .....	53
Section 348.	Determination of Availability and Need - Contents.....	53
Section 349.	Notice of Hearing .....	54
Section 350.	Hearing .....	54
Section 351.	Final Determination of Availability and Need.....	55
Section 352.	Subsequent Actions .....	55
Section 353.	Appeal.....	55
<b>SUBCHAPTER 8 TRANSFER AND LOSS OF RIGHTS.....</b>		<b>56</b>
Section 354.	Transfer, Assignment, Descent, Distribution and Creation of Security Interest	56

Section 355.	Loss By Nonuse .....	56
Section 356.	Loss By Adverse Possession, Prescription, Estoppel, or Acquiescence.....	57
Section 357.	Outside Proceedings .....	57
<b>SUBCHAPTER 9 GENERAL HEARING PROVISIONS .....</b>		<b>58</b>
Section 358.	Applicability .....	58
Section 359.	Notice .....	58
Section 360.	Time and Place of Hearing .....	58
Section 361.	Continuances.....	58
Section 362.	Presiding Officer .....	59
Section 363.	Forms of Evidence.....	59
Section 364.	Consolidation of Hearings .....	59
Section 365.	Recording.....	59
Section 366.	Decision .....	59
<b>SUBCHAPTER 10 APPEALS .....</b>		<b>61</b>
Section 367.	Appeals Provided For .....	61
Section 368.	Final Action - Jurisdiction .....	61
Section 369.	Notice of Appeal - Service.....	61
Section 370.	Transmittal of Record.....	61
Section 371.	Scope of Review.....	62
Section 372.	Administrative Appeals Board - Additional Powers .....	62
<b>SUBCHAPTER 11 DEFINITIONS .....</b>		<b>63</b>
Section 373.	Director of the Environmental Protection Office .....	63
Section 374.	Domestic Use .....	63
Section 375.	Effective Date .....	63
Section 376.	Municipal Use .....	63
Section 377.	Person .....	63
<b>SUBCHAPTER 12 PROHIBITED ACTS .....</b>		<b>65</b>
Section 378.	Waste of Water Prohibited.....	65
Section 379.	Unauthorized Actions Affecting Waters Prohibited.....	65
Section 380.	Obstruction of Seminole Nation Employees.....	65
Section 381.	Misstatement of Material Facts.....	65
Section 382.	Sanctions for Code Violations .....	66
<b>SUBCHAPTER 13 MISCELLANEOUS PROVISIONS .....</b>		<b>67</b>
Section 383.	Severability .....	67
Section 384.	Construction.....	67
Section 385.	Review of Authority.....	67

Section 386. Extension of Time Limits .....	67
Section 387. Representation.....	67

**TITLE 20  
LAND USE**

**CHAPTER ONE  
OIL AND GAS WELL DRILLING**

**Section 101. Permits**

It shall be unlawful and an offense for any person, firm or corporation, or any individual, either for himself or acting as agent, employee or servant to any other person, firm or corporation, to commence drilling operations, to drill any well or to open any well drilled for the production of petroleum or natural gas, or to engage in any work or to erect any structures, tanks, machinery, pipe lines or appurtenances incident to the production of petroleum or natural gas, or to operate or maintain any property or premises for such production within the limits of any land owned by or held in trust for the Seminole Nation of Oklahoma, unless a permit for the drilling and operation of said well shall have been first obtained as provided by the terms of this ordinance.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12,  
November 16, 1991.]

### **Section 102. Drilling Specifications**

Any person, firm or corporation, or any individual, either for himself or acting as agent, employee or servant to any other person, firm or corporation, shall not drill any well, commence drilling operations, or open any well drilled for the production of petroleum or natural gas, and shall not operate or maintain any well for such production within the limits of any such land of the Seminole Nation, unless said drilling operation conforms to the provisions hereto. All wells shall have surface pipe set to the depth of 1,000 feet or the bottom of the hole, whichever is less. Cement shall be circulated from the top to the bottom. In all injection wells in which casing is set, tubing shall be run and injection made through the tubing with a packer set above the perforations in the producing sands. All producing wells shall be produced through tubing with a packer set above the producing sands. At all times pressure of 100 pounds shall be maintained between the tubing and the casing. Violation of this Section, or any part thereof, shall be punishable by a payment of damages to the Seminole Nation not to exceed \$100.00 including costs. Each day's operation in violation of this Section shall be a separate offense.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12,  
November 16, 1991.]

### **Section 103. Application for Permit**

To obtain a drilling permit, the requesting party shall file a written application with the Secretary of the General Council. Such application shall define the drilling area and fix the location where the proposed well will be drilled and shall contain a statement as to the number of lots in the drilling area on which the applicant holds oil and gas leases or contracts for such leases from the property owner. The petition shall also state that applicant has more than fifty-one percent (51%) of the property under lease, and what percentage of the total property in the area applicant has under lease. Said petition shall be sworn to as true and correct by applicant or a duly authorized agent or attorney for applicant and before some officer authorized to administer oaths. There shall be attached to the application a plot or map showing the location of the well and the proposed location of the tanks, pits, pipe lines, and embankments. If the application shows that the applicant is the owner of the leases covering all the property in the drilling area, the Secretary may grant a permit for such well, provided that such permit shall not be used by applicant until the applicant has complied with all the requirements in relation to the drilling of a well within the above described limits of the Seminole Nation. If the application shows that the applicant does not have

the entire drilling area under lease the Secretary shall deny the application, and consideration of the application shall be transferred as on appeal to the General Council.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

#### **Section 104. Deposit**

Before any permittee may make use of such a drilling permit, there shall be deposited with the Secretary of The General Council the sum of One Hundred Dollars (\$100.00), as a permit fee.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

#### **Section 105. Bond**

Before any permittee may proceed under any permit to drill or put down any petroleum or natural gas well, such permittee shall file with the Secretary of the General Council a good and sufficient bond executed by some bonding or indemnity company authorized to do business in the State of Oklahoma, running in the name of the Seminole Nation of Oklahoma, and conditioned that the applicant will pay or discharge any liability imposed by law for damage on account of injury to property, public or private, or bodily injury, including death received or suffered by any person resulting from the drilling operation or maintenance of such well, equipment, machinery, tanks, pipe lines or appurtenances thereto. The maximum total liability under said bond for loss or damage, either to person or property, as to each well shall be Fifty Thousand Dollars (\$50,000.00); provided that such bond shall be made for a period of not less than one year, and provided further that a blanket bond in the sum of One Hundred Thousand Dollars (\$100,000.00) may be supplied to cover one or more drilling wells, any operator of an oil or gas well on tribal lands in the Seminole Nation shall at all times keep on file a bond similarly conditioned with a maximum liability of Ten Thousand Dollars (\$10,000.00) for each operating well, provided that a blanket bond of Fifty Thousand Dollars (\$50,000.00) may be filed to cover one or more wells. No operation bond shall be required for any well until the time that the drilling bond covering such well has expired.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

#### **Section 106. Location of Well**

No well for the production of oil or gas shall be put down nearer than twenty-five (25) feet to a street or nearer than fifty (50) feet to any structure used as a home or place of business.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

#### **Section 107. Fence**

At the conclusion of drilling operations a fence shall be erected around the well and machinery used in connection with the operation of said well.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

**Section 108. Gas Motors**

All gas motors used for pumping wells on said tribal land shall be properly muffled.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

**Section 109. Pipe Lines**

All pipe lines laid on said tribal lands, except those on the location, shall be buried to a minimum depth of twenty-four (24) inches below the normal surface of the ground, and no pipe line shall be laid until the person or company laying such line shall obtain a permit from the Secretary of the General Council. A permit fee of One Dollar (\$1.00) a rod must be paid at the time the permit is issued. Any damage to streets, sidewalks or public ways must be repaired by the person or company laying the line.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

**Section 110. Pits**

As soon as the bottom of such pits have dried sufficiently to permit such work, weather conditions permitting, the slush pits and circulation pits used for the storing of mud and drilling water during drilling operations, shall be, by the operator, filled in and leveled.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

**Section 111. Condition of Premises**

The person or persons in charge of the producing operations of a well shall keep the fence enclosure around such well free from all trash and inflammable substances not necessary to be used in the operation of such well, and shall keep the weeds out and otherwise keep such location in a clean and orderly looking condition. Machinery and equipment not used in the operation of said well shall not be stored or left in such enclosure after a reasonable time for its removal. All oil tanks shall be painted.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12, November 16, 1991.]

**Section 112. Abandonment; Removal of Equipment**

Upon abandonment of any location on tribal land, the person or company in charge of such operations shall remove from the well location all of the derrick, equipment, machinery and tanks and level all dikes and embankments and fill the drilling cellar if any.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12,  
November 16, 1991.]

**Section 113. Common Meaning of Words Governs**

Words used in this ordinance, unless otherwise defined, shall be the common meaning of such words as generally understood in the oil and gas industry, unless the contents herein clearly imply otherwise.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12,  
November 16, 1991.]

**Section 114. Separate Validity of Provisions**

If any part of this ordinance, or any rule, regulation, or requirement shall be held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of any part or section or other rule, regulation or requirement herein.

[HISTORY: Enacted by TO 76-2, July 17, 1976; codified by TO 91-12,  
November 16, 1991.]



## **CHAPTER TWO**

### **SEMINOLE NATION PUBLIC WORKS ORDINANCE**

#### **Section 201. Title and Date**

This Chapter shall be titled: Seminole Nation Public Works Ordinance. The ordinance shall become immediately effective upon enactment of a resolution for adoption, by the Seminole Nation General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 202. Purpose**

The purpose of the Seminole Nation Public Works Ordinance is to define the policies, establish an organization and identify the necessary rules and regulations for the operation, maintenance and management of the various public utilities located within the Seminole Nation jurisdiction.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 203. Policy**

It shall be the policy of the Seminole Nation of Oklahoma to operate, maintain and manage the public utilities and services within the Seminole Nation jurisdiction so that the community residents are provided with a high level of service designed to minimize exposure to adverse conditions which could negatively impact the physical and environmental health of any individual or the community. It shall also be the policy of the Seminole Nation that the operation, maintenance and management of the public utilities and services shall be carried out through an efficient Utility Program and in a financially responsible cost effective and self- sufficient manner.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 204. Jurisdiction**

The authority to establish a Tribal Utility Program and to levy appropriate user fees to all residents and organizations in operation within the Seminole Nation jurisdiction is provided by the Seminole Nation of Oklahoma Constitution.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 205. Definitions**

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be set forth as follows:

(a) “Appurtenances” means real and personal property owned by the Utility Program or the Tribe located on, near or under the roadways and streets, such as fire hydrants and valves.

(b) “Contractor” means an individual, firm or organization that contracts with the Utility Board to provide environmental services or utility repairs design, inspection, reconstruction or operation.

(c) “Customer” means a person, business, agency or other organization that uses, is entitled to use, or is obligated to pay for the use or receipt of services from the Utility Program.

(d) “Customer Lines” means the potable water lines and sanitary sewer lines immediately adjacent to, inside of, or under a customer’s residence or their building or property, which are either connected to utility service lines or are maintained by the customer separately from utility service lines.

(e) “Distribution System Lines” means those potable water lines maintained by the Utility Program by which water utility services are provided to customers.

(f) “Meter” means a device, owned by the Utility Program, for measuring the amount of water services provided to a particular customer.

(g) “Manager” means an individual hired by or appointed by the Utility Board to oversee and manage the operation of the Utility Program.

(h) “Operator” means an individual hired by or appointed by the General Councilor manager to provide direct day to day preventive maintenance and operational service of the public water and sanitary sewer utilities.

(i) “On-Site Sewage Treatment and Disposal Systems” means individual or community septic tanks and subsurface drain fields and associated appurtenances that collect, treat and dispose of liquid waste generated by customers, which are maintained and operated by the Utility Program.

(j) “Off-Reservation” means any area located outside of the exterior boundaries of the Seminole Nation jurisdiction.

(k) “Program” - The Utility Program of the Seminole Nation.

(l) “Regulation” - Rule of law or procedure duly adopted by the General Council for purposes of implementing the requirements of this Chapter.

(m) “Shall” and “May.” “Shall” is mandatory. “May” is permissive.

(n) “Utility Board” is responsible for, and authorized to manage, the Utility program of the Seminole Nation, as established by this Chapter.

(o) “Utility Program” or “Tribal Utility Program” means a program of the Seminole Nation authorized to operate the utility services provided by the Tribe.

(p) “Vendor” means any individual firm, contractor or organization who regularly supplies parts, equipment, supplies and services to the Utility Program used in the operation

maintenance and management of the Utilities Services of the Seminole Nation Indian Reservation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 206. Establishment of Utility Program**

There is hereby established the Seminole Nation Utility Program having the responsibility for operating and maintaining the tribal public utilities and providing essential community services directly or by contract.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 207. Utility Board**

There is hereby established the Seminole Nation Utility Board to serve as the advisory, administrative and management authority for the Seminole Nation Utility Program.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 208. Utility Board - Operating organization**

The Utility Board shall operate as a subordinate unit of tribal government, independent in its daily operation, but responsible to the General Council for its action. The methods of appointment, in terms of office and operating procedures of the Utility Board shall be set forth in this and the Plan of Operation of the Seminole Nation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 209. Utility Board - Powers and Responsibilities**

- (a) The Utility Board shall manage the public utilities of the Nation, and obtain and disburse funds as required for operation, maintenance and expansion of the Tribal public utilities.
- (b) To fulfill these responsibilities, the Utility Board shall have to power to:
  - (1) Levy and collect reasonable fees for utilities and services subject to review by the General Council prior to adoption by the Board members;
  - (2) Provide for the hiring and compensation of appropriate management and personnel; said hiring and compensation to conform with established Tribal personnel policies and salary guide lines;
  - (3) Adopt appropriate regulation to implement the requirements of this Chapter;
  - (4) Authorize disbursement of funds for operation, maintenance, improvements to the system, elders and low-income support and repair of

utility services based upon an annual budget to be ratified annually by the General Council.

- (5) Contract with vendors and contractors to assure that safe and reliable services are available to and utilized by the residents of the Seminole Nation jurisdiction. The Utility Board is expressly exempt from Tribal procurement and contracting requirements;
- (6) Acquire real and personal property on behalf of the Utility Program provided that the Utility Board shall not petition the Secretary of the Interior to place any land in trust on behalf of the Seminole Nation without the express consent of the General Council as authorized by a duly adopted resolution;
- (7) Authorize capital expenditures and the development or construction of physical infrastructure, not to exceed three million dollars (\$3,000,000), such as sewers, lagoons, water storage systems; water treatment facilities, water distribution systems, access roads, and buildings, for example;
- (8) Execute as an agency of the Seminole Nation applications for receipt and administration of federal grants and any other federal applications or contracts for purposes of funding types of activities in which the Utility Board may engage pursuant to the terms of Section 290 of this Act;
- (9) Borrow money or make, accept, endorse or issue bonds, debentures, promissory notes, mortgages, or security agreements or any other instrument of indebtedness or guaranty not to exceed three million dollars (\$3,000,000.00);
- (10) Have and exercise the right of eminent domain for the purpose of acquiring right-of-way and other properties in the manner now provided by the condemnation laws of Seminole Nation, as may be enacted, for acquiring private property for public use, provided, that the use of said eminent domain provisions, shall be restricted to the purpose of developing and providing gas distribution, water works and sewage disposal facilities;
- (11) Acquire water rights, construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, improve, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, facilities, property rights and transportation and distribution lines, facilities, equipment or systems necessary to transport, distribute, sell, furnish, treat, store and dispose of water or sewage. The disposal of any water outside the Seminole Nation shall not be permitted without the consent of the Legislature; and
- (12) Authorize investment of Utility Program funds in accordance with accepted tribal policies and procedures.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 210. Utility Board - Membership**

(a) The Utility Board shall be composed of five (5) Tribal Members nominated by the Principle Chief and confirmed by the General Council to serve on the Utility Board. Appointment of each Board member shall be individuals with substantial education, experience, training, and/or knowledge of delivery or management of utilities, or a related field; and shall be subject to the following order of appointment preference: (1) an enrolled member of the Seminole Nation of Oklahoma; (2) an enrolled member of any federally-recognized Native American Tribe; and then to (3) any non-Indian.

(b) No member of the Board shall be an employee of the Seminole Nation while serving on the Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 211. Term of Office**

(a) Members shall serve for a term of four (4) years except for the initial members of the Board.

(b) Initial Board member's term shall end on October 1, 2014. The second member's term shall end on October 1, 2015. The third member's term shall end on October 1, 2016. The fourth- and fifth-member's term shall end on October 1, 2017.

(c) Any Member shall be eligible for reappointment regardless of whether or not some or the remainder of the Board membership is reappointed. A member who is not reappointed shall serve the remainder of his or her term until a successor is appointed and is confirmed by the General Council.

(d) Future member appointments shall be in annual intervals; and members may holdover in office until their successor or replacement is appointed.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 212. Utility Board - Appointment**

The General Council will replace members upon resignation, or if a member has not acted in the best interest of the Board and the General Council decides by majority vote to replace that person.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 213. Utility Board - Vacancies**

If a Board Member resigns, moves from the local area, dies, or is found guilty of a felony or major crime in any court of law the General Council shall declare the Utility Board Member's position vacant. If any Board Member misses two consecutive Utility Board meetings without a valid excuse, the General Council may declare the position vacant. All vacancies shall be filled within one month in accordance with this Section. In the event that the number of unfilled Board Members vacancies prevents establishing a quorum for purposes of conducting business, the General Council shall act as the interim Utility Board until such time as the filling of Board Member vacancies allows for a quorum.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 214. Officers**

Within ten days after the appointment of the initial Board Members, there shall be an organizational meeting of the Utility Board to elect a Chairperson, Vice-Chairperson and a Secretary-Treasurer from among the Utility Board Members. The Officers shall be elected annually thereafter, immediately following the appointment by the General Council of the new Board Members.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 215. Duties of the Officers**

Officers of the Utility Board shall assume the following duties:

- (a) Chairperson: Shall preside at all meetings; call and arrange all meetings; be responsible for general management of the Utility Board's affairs; and perform all duties incidental to the office.
- (b) Vice-Chairperson: Shall perform all of the Chairperson's duties in the absence of the Chairperson; and shall assist the Chairperson as required in handling the Utility Board's affairs.
- (c) Secretary/Treasurer: Shall keep or cause to be kept a complete and accurate record of all meetings and shall maintain all correspondences of the Utility Board. The Tribal Accounting Department shall be responsible for maintaining financial resources of the Utility Program and shall make all investments for the Utility Board in accordance with appropriate section of this Chapter. The secretary/treasurer shall report the Utility Program's financial status quarterly at regularly scheduled General Council meetings and shall present to the Council Members for their action all requests for funds to meet the Utility Program's financial obligations and shall prepare an annual financial statement for submission to the General Council for the general membership meeting.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

## **Section 216. Meetings**

(a) The Utility Board shall meet when business demands and requires attention, but in no case less than once per month. Regular and special meetings shall be called by the Chairperson, in writing, to schedule a special meeting of the Utility Board. If the Chairperson fails to schedule a meeting within five days after receipt of a written request from a Utility Board member, any other two Board members may call such a meeting.

(b) Meetings shall be held in a public place, and the Utility Board shall provide at least 5 days public notice of Meetings. Emergency meetings may be convened with less than five days' notice, in cases of emergency where loss of life, limb or property is threatened, or where the continued operation or fiscal capability of the Tribal public utilities may be in jeopardy. All meetings shall be open to members of the tribal community and to users of the Tribal Public Utilities.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 217. Quorum and Voting**

A minimum of three Board Members is required to establish a quorum and conduct Utility Board business. Any action taken by the Utility Board must be approved by a majority vote of those Members present at a Board meeting. Each Board Member of the Utility Board, except the Chairperson, shall be entitled to vote on each matter coming properly before the Utility Board. The Chairperson votes only in the event of a tie.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

## **Section 218. Meeting Agenda**

Regular meetings of the Utility Board shall be conducted according to the following agenda outline:

- (a) Call to Order
- (b) Roll Call
- (c) Reading of minutes of previous meeting
- (d) Report by the Accounting Department or Manager on Financial Affairs
- (e) Report by Manager and/or Operator
- (f) Unfinished business (to include comments from the public)
- (g) New business (to include comments from the public)

- (h) Miscellaneous business
- (i) Adjournment

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 219. Compensation**

Members of the Utility Board shall serve without monetary compensation, except as determined by the General Council. The Board members shall initiate prevailing government rates for mileage, per diem, or other costs, consistent with tribal policy provided that funds are available within the Utility Program budget approved by the Utility Board and ratified by the General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 220. Public Hearings**

Utility Board shall convene public hearings to discuss changes in utility rates assessed to users of tribal public utilities and substantial changes to this Chapter. All customers will be notified of tribal public hearings in accordance with public notice postings and mailing addresses listed on file.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 221. Management Personnel**

The Utility Board shall manage the business and operating affairs of the Utility Program. The Utility Board may provide for hiring and contracting personnel for the care and maintenance of the Tribal Public Utilities (provided that hiring shall be in accordance with tribal personnel policies) and shall establish compensation rates consistent with the Utility Program's approved budget and the Tribal salary schedule. The Utility Board may delegate only those management duties that are not specifically designated as duties to be performed exclusively by the Utility Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 222. Annual Budget**

The Utility Board shall establish an annual budget enumerating the necessary costs for Utilities and Services operation, maintenance, administration, personnel, liability and other insurance, replacement, and a reserve for major repairs and replacements. The annual budget shall be ratified by the General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 223. User Fee Schedule**



The annual budget shall be used to determine a fee schedule to be assessed to the users of Tribal Public Utilities. The budget and fee schedule shall be approved by the Utility Board and ratified by the General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 224. Fiscal Year**

The fiscal year for the Utility Program shall be the same as the fiscal year of the Seminole Nation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 225. Depository**

The depository of the Utility Program shall be a separate commercial account or accounts in any bank selected by the Utility Board. Said account shall be in the name "Seminole Nation Tribal Water System."

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 226. Investments**

Funds on deposit in excess of 30 working days may be invested in insured deposits at a commercial bank, savings and loan association or investment company offering the highest interest rate, providing that investment deposits shall have immediate liquidity. Investment deposits shall be made by the Utility Board Treasurer. Withdrawal of investments require the approval of the Utility Board. Withdrawals from accounts shall be signed by two of the officers of the Utility Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 227. Disbursements and Receipts**

The Utility Board shall determine the distribution of funds required for the operation, maintenance and management of the Tribal Public Utilities. Disbursements will be made by check upon presentation of invoices of Utility Board members or employees properly designated by the Utility Board. The Checks written on accounts shall be signed by two of the Officers of the Utility Board. Cash receipts will be deposited intact, as to amount, in the depository promptly. Receipts will be issued for all cash received and copies filed and retained for accounting.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 228. Records and Accounts**

Suitable financial records shall be maintained for all expenditures, receipts from payments for services, investments and returns on investments, and other financial matters necessary for

operation of the Utility Program. The separate accounting records for the Utility Program shall be maintained in accordance with usual and generally accepted Accounting Principles. The records of accounts shall be submitted to the General Council quarterly, annually and at any time requested.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 229. Exclusive Use of Funds**

The funds accrued by the Utility Board and kept on deposit are for the exclusive use of the Utility Program for the necessary operation, maintenance, and management of the Tribal public utilities. These funds may not be loaned to the Tribal General Fund or any other accounts of the Tribe or other Tribal departments, except to pay for services provided to the Utility Board or Utility Program by other Tribal Departments.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 230. Audit and Reports**

The accounts of the Utility Board will be audited annually at the close of the fiscal year at the expense of the program. Annual and periodic reports will be submitted by the Utility Board to the General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 231. Bonding**

Officers of the Utility Board and any other person(s) designated to handle funds for the Utility Program, shall be bonded or insured in accordance to Tribal Policy.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 232. Insurance**

Insurance shall be part of the Tribal insurance policies, with expenses thereof pro-rated to the Utility Program if so directed by the General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 233. Petty Cash**

A petty cash fund is authorized to be established in the amount of \$200.00. This fund may be used to pay small expenses, when necessary, and to pay small obligations when it is not feasible to pay by check on the official depository. The Utility Board will reimburse or pay in full, in the amount of and upon the submittal of receipts, vouchers, and statements signed by the payees, of their proof of expenditure. Petty cash reimbursement vouchers shall be certified by the Utility Board Secretary/ Treasurer and Accounting Department.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 234. Regulations and Policy**

The Utility Board shall have the authority to adopt appropriate regulations and policies as needed to implement the provisions contained in this Chapter. Any proposed regulation or policy shall be submitted to the General Council for review at least two weeks prior to its proposed effective date, provided however, that emergency regulations may be adopted and shall take effect immediately without prior General Council review. Emergency regulations shall be presented to the General Council within 48 hours after adoption. Any regulation may be rescinded by the General Council at its discretion.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 235. Regulations and Policies: Suspension or Amendment**

No regulation duly adopted by the Utility Board may be suspended or amended by any person without prior written authorization of the Utility Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 236. Amendments**

The Utility Board shall recommend amendments to this Chapter that it believes necessary to promote the efficient, cost effective and self-sufficient operation of the Utility Program, and shall present such amendments to the General Council for approval.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 237. Grievances**

(a) Any customer or any applicant for utility services, who is aggrieved by any action of the Utility Program or the Utility Board may file a written grievance with the Utility Board. The Utility Board shall abide by the regulation set forth in this Chapter and shall handle such grievances in a manner which provides for due process of law. The procedure for grievances shall be as follows:

- (1) The customer shall present a written or oral grievance to the Utility Board or one of its members.
- (2) The grievance shall be addressed at the next scheduled Utility Board meeting or within one week of the filing date.
- (3) The customer shall be informed of the date, time and place of the meeting when the grievance will be discussed.
- (4) The customer may attend and present evidence on his or her behalf.

- (5) The grievance reply shall be given to the customer with a copy sent to the Tribal Administrator within three (3) working days after the Utility Board meeting.

(b) All decisions by the Utility Board on matters that have been submitted for grievance under the Utility Program's grievance procedure shall be considered final.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 238. Non-Waiver of Sovereign Immunity**

The Utility Program is an agency of the Seminole Nation of Oklahoma, and thereby retains all rights of sovereign immunity of the Tribe. By providing services and entering into service agreements, the Utility Board and/or Utility Program shall not waive the sovereign immunity of the Seminole Nation or any of its officers, agents, attorneys or employees, or anyone else acting at the direction of and on behalf of the Seminole Nation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 239. Services Provided**

The services provided by the Utility Program shall include domestic water. Additional services including, but not limited to, Elders and low-income support and community system improvement projects, may be provided upon approval by the Utility Board and ratification by the General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 240. Water Service**

The Utility Board has the responsibility of providing safe, adequate water for a fee to those houses, businesses and institutions connected to the mainlines of the community water system. Responsibility for maintenance will include water sources, storage tanks, controls, mainlines, valves and hydrants, and service lines to the curb stops only. The service line from the curb stop to the house and interior house plumbing are the responsibility of the customer. The individual household water meters are owned by the Utility Program and it is the responsibility of the Utility Program to maintain the meters. The tribal community water systems shall be managed such that the regulatory requirements of the Federal Safe Drinking Water Act, as established by the Environmental Protection Agency, are satisfied.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 241. Meters**

All homes hereafter that are connected to the community water system are required to install a water meter. All meters for measurements of utility services provided shall be installed in

accordance with the requirements of the Utility Program and shall be maintained by it. All meters shall remain accessible to Utility Program personnel and no person shall obstruct or tamper with any meter. Such obstruction or tampering shall be a violation of this code and subject the violator to actual damages and civil penalties under this code. The owner of the property on which the meter is located shall be responsible for all damage to or tampering with the turn off/on water valve attached to such meter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 242. Reconnection of Service**

(a) If the water has been shut off by the Utility Board due to a customer's non-compliance with any provision of this Chapter, a reconnection fee as established by the Utility Board, and compliance attained before reconnection may occur. The Utility Board shall have the authority to waive the penalty charge in cases involving extenuating circumstances and when the shut-off is not caused by or through any fault or negligence of the property owner.

(b) Reconnection may be performed by active Utility Board Members, Water Systems Manager, and the Water System Technician. The customer must have proof of payment of the reconnection fee, and proof of the establishment of a payment plan on their account from the Accounting Department.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 243. Public Water Use Requirements**

The owner of each lot or parcel of real property within the area served by the tribal water system is hereby required at his or her expense to connect such facilities to the community water system in accordance with the provisions of this article under the following condition. The community water system is within 200 feet of any dwelling, business or water using activity and to which service by such public or community water is available. Such installations and connections must be made within 60 days after the date of mailing or personal service by the Utility Board addressed to the owner of the property to be served notifying such owner to make such connection unless such time shall be extended by the utility.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 244. Obtaining Service Without Authorization**

No person shall obtain services from the Utility Program without authorization. Any person who obtains such unauthorized services by connection to the Utility Program facilities without authorization or by bypassing or tampering with any meter shall be liable to the Utility Program for three times the value of the actual service obtained in addition to the cost of correction.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 245. Future Services**

At some future date the Utility Board may assume responsibility to provide sewage, electrical, gas, telephone, cable TV or other services.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 246. Maintenance Schedule**

The Utility Board shall develop and follow a regular schedule of maintenance service for each utility service provided.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 247. Personnel**

The Utility Board shall have the full authority (within Tribal personnel policies and procedures) to hire, evaluate and discipline or fire if necessary the personnel required to manage operate and maintain the Utility Program. Existing Tribal Staff may be used and employed by the Utility Program to provide necessary maintenance and management services through agreements approved by the General Council and the Utility Board. The specific personnel policies of the Tribe shall be followed. Job descriptions for all employees will be developed and followed.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 248. Purchasing**

The Utility Program System Manager may make or approve purchases from the petty cash fund for amounts up to \$500.00. Above this amount, the Utility Board Chairperson must have approval and disburse funds according to appropriate sections of this Chapter. An accurate account and receipts of all expenditures shall be kept.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 249. Equipment**

(a) All Utility Program equipment shall be maintained according to the established maintenance schedule and quickly repaired when necessary so that disruptions of service are minimized.

(b) Utility Program tools and equipment are not for personal use. A record of tools and the individual to whom they were assigned shall be maintained. An inventory of tools, costs and conditions will be kept on file. Individuals will be held responsible for the security of tools and supplies that are assigned to them.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 250. Inventory and Depreciation**

(a) An accurate inventory and depreciation schedule of tools, equipment, and supplies will be maintained. It shall be kept up to date.

(b) A reserve supply of repair and regularly used supplies will be maintained by the Utility Program. A listing shall be kept of local suppliers of repair parts, replacement equipment and expendable supplies.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 251. Public Relations**

(a) The Utility Board shall keep customers notified about changes in fees and rate schedules, water quality regulatory compliance, levels of service and any other information which may affect customers. Notices may be included in monthly billing statements or may be disseminated to the public through separate mailings, tribal newspaper or posting throughout the community.

(b) Any person filing a complaint or seeking information shall be given assistance in a courteous manner. Complaints may be presented in writing to any Utility Board member for resolution and action. The Utility Board will attempt to resolve such complaints at the next regularly scheduled meeting of the Board Members. The Chairperson may call a special meeting of the Board Members to resolve complaints as deemed necessary.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 252. Emergency Notification**

An emergency notification plan will be developed by the Utility Board and reviewed annually for notifying residents and visitors of:

(a) Discontinued service for more than eight (8) hours.

(b) Substandard conditions in water quality. This includes bacteriological, chemical or physical quality deficiencies.

(c) Any other conditions which may adversely affect the health of the community residents or visitors.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

## **Section 253. Staff Training**

(a) All employees that are newly assigned to operate the utility systems shall receive instruction from an experienced operator. A minimum of 32 hours of instruction should be received before the new employee assumes responsibility for operations.

(b) Regular operators should receive up to 40 hours of formal instruction per year. The Utility Board will assure that operators maintain current knowledge of water system operation techniques.

(c) A training plan for the water system operators shall be developed which will provide for upgrading of knowledge and skills in water utility operations, maintenance and management.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 254. Limits of Responsibility**

The Utility Program shall not be responsible for, nor shall it maintain or repair, any private or domestic water or sewer system, garbage, roads or lighting except by specific agreement establishing fair rates of compensation to the Utility Program. Such agreement must be approved and signed by the Utility Board. The utility program shall not be responsible for any loss or damage beyond its control resulting from any defect in, or damage to, a customer's water or sewer lines or fixtures, garbage storage facilities, driveways or parking lots, hydrants or lighting.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 255. Right of Entry - Inspection**

The Water Board, or its authorized representative, is hereby authorized to make limited, reasonable inspections, at reasonable times, of any grounds, building or residence served by the Utility Program to the extent necessary to insure that customer utility fixtures, lines and equipment are not being operated in a manner that would likely disrupt or interfere with utility services. Except in cases of emergency where life, limb, or property are threatened, or in cases of immediate water shortages, the Utility Program shall give the customer at least 24 hours' notice prior to requesting permission to enter and inspect. If permission to enter and inspect is denied or impeded in any way, the Utility Program shall obtain a court order authorizing such entry and inspection. Where the permission to enter and inspect is unreasonable withheld, the Utility Program may assess court costs and related expenses and add them to the affected customer's bill.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 256. Disruption of Service**

(a) The Utility Program may shut off water service, or disrupt traffic on the public right-of-way to perform repairs, provided that advance notice has been given to affected



customers. Provided, however, that in cases of emergencies where loss of life, limb or property is threatened, or in cases of immediate water shortage service may be disrupted without advance notice. The Utility Program shall not be responsible for consequent damage as a result of lack of water during authorized disruption of service.

(b) The Utility Program shall not be liable for any associated damages or delay caused by the breaking or leaking of any pipe, valve, fixture or other contrivance as a result of the lack of water or sewage to or from any mains, services, hydrants, lines or reservoirs during authorized disruptions of service.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 257. Permits**

No connection, reconnection with, dissections from, or other private uses of any water or sewer system, road, appurtenance or other utility service or facility shall be made without a written permit by the Utility Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 258. Water Shortage - Service Preference**

(a) In cases of a water shortage proclaimed by the Utility Board, the Utility Program shall regulate the amount of water any customer may be allocated. The Utility Board also may give preference to the customers and/or amounts of water to be allocated, provided the Utility Board allocates water according to public necessity and convenience, and provides for fair allocations between customers.

(b) Any customer violating a legal allocation may have his/her water service discontinued. Service shall be resumed only upon payment of the approved re-connection fee and penalties.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 259. Unnecessary Waste of Water**

The Utility Board reserves the right to assess a penalty and/or terminate customer's service when the customer has repeatedly, unduly wasted water. Such undue waste is evidence by the fact that hydrants, taps, hoses and other fixtures are permitted to run continuously when not in productive use where such condition is not corrected within 24 hours' after receipt of the notice. Service shall be resumed only after correction of the condition causing wastage of water and payment by the customer of the approved re-connection fee, penalties and any other accounts in arrears to the Utility Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 260. Conservation of Resource**

(a) The Utility Program shall conduct operation, maintenance and repair services in a manner that will maximize the conservation of natural, financial, and property resources. Customers of the Utility Program shall be encouraged to conserve water to secure the comfortable, healthy and aesthetically pleasing lifestyle the Tribe enjoys. The Utility Program may offer assistance and service to customers for water conservation and other material resource conservation and recovery as determined to be feasible by the Utility Board.

(b) New or existing homes or buildings not connected to the Community Water System, at the time of the adoption of this Chapter, shall not be allowed to connect to the Community Water System unless the said facilities are equipped with the following: 2 GPM (gallons per minute) shower heads; 2 GPM kitchen faucets or aerators; 1 GPM urinal, (if applicable); 1.5 GPM lavatory faucets or aerators; 1.6 GPF (gallons per flush) Ultra low flow toilets.

(c) All applicants for new service must show proof that the above (if applicable) approved devices are installed prior to connection to the system.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 261. New Customers Services**

Any dwelling within the service area of the Utility Program shall be eligible for services, provided all of the following conditions are met:

- (a) Facilities and resources are adequate to meet additional load;
- (b) New customer agrees to adhere to this Chapter; and
- (c) Approval by the Utility Board

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 262. Conditions For Service Payments**

As a condition for receiving utility services from the Utility Program, the customer must comply with all provisions of this Chapter, and any regulations duly adopted by the Utility Board as well as any other applicable codes or regulations, including being current in the payment of all fees, penalties, costs, damages, or other charges assessed by the Utility Program.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 263. Maintenance; Repairs; Liability**

The customer shall be responsible for maintaining and repairing water and sewer lines located on or in the customer's grounds, building or residence in compliance with applicable regulations. The customers shall notify the Utility Program in advance of major maintenance or repairs planned for water or sewer lines. The customer shall permit the Utility Program to inspect the work for compliance with applicable regulations. The customer shall be liable for any damage to the Utility Program's lines, equipment or other property caused by the customer, his family, guests, tenants, agents, employees, contractors, licensees or other persons under the customer's control or authority.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 264. Customer Termination of Service: Abandonment**

A customer planning to vacate any grounds, building or residence served by the Utility Program shall notify the Utility Program in writing one week prior to the date the customer planned to either vacate or terminate service, whichever is later. A customer who fails to give notice is responsible for all charges accrued up to one week after notice is received by the Utility Program, or up until service is terminated whichever comes first.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 265. Water Shortages**

During water shortages declared by the General Council, the customer shall limit the use of water according to allocations recommended by the Utility Board and established by General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 266. Inspections**

The customer shall not unreasonably withhold permission for the Utility Program to enter and inspect the Utility Program's and customer fixtures, lines and equipment when necessary to ensure that they are operating in a manner that would not likely disrupt or interfere with utility services. The customer shall be liable for any costs or related expenses causes by unreasonable withholding of permission.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 267. Permits**

The customer shall obtain written permission from the Utility Board prior to making any connection, re-connection with, disconnection from, or other private use of any Utility Program water or sewer system, road, appurtenance, or other utility service or facility. The customer shall obtain written permission from the Utility Board prior to constructing any private water or sewer system, or other private utility.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 268. Cross-Connections**

The customer shall not make a cross-connection with the Utility Program supply. A cross-connection is defined as any physical connection between the Utility Program system and another piping system, either water or waste. Any individual source must be totally disconnected from the household plumbing prior to connection to the Utility Program supply. “Disconnection” done solely by a valve shall not be allowed.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 269. Hazardous Waste Disposal**

No customer shall dispose of any toxic, radioactive or otherwise hazardous waste into any Utility Program or private sanitary or storm sewage system. Hazardous and toxic wastes include but are not limited to: oil, pesticides, gasoline, organic solvents, paint poisons and other manufactured chemical compounds.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 270. Fee Schedule Establishment**

(a) The schedule of fees for utility services shall be set annually by the Utility Board by regulation. The fee schedule will be based on the estimated average annual costs for operation of all utility services. The fee schedule shall include a basic rate for all services. Payment of which shall be required of each customer regardless of whether, or the extent to which, the customer uses any of the services, and; other fees, charges, penalties and assessments which the Utility Board is authorized to levy as provided under various sections of this Chapter. The Fee schedule may be adjusted as needed to meet utility operating expenses.

(b) The following initial charges, paid monthly and revisable by the Utility Board, shall be levied against users of the Seminole Nation Indian Reservation Community Water System:

(c) The Utility Board may authorize incentives for pre-payment such as: pay twelve months in advance, get one month free; volunteer service in lieu of money; and discount for on time payment.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 271. Notice to Customers**

A copy of the fee schedule adopted by the Utility Board shall be sent to each customer at least 30 days prior to the date the established fees take effect.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 272. Billing Responsibility**

The Utility Board and/or Utility Program is responsible for billing customers for Utility Services. The billing service, however, may be contracted to the Tribe, Housing Authority, or other agency or firm at the discretion of the Utility Board and General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 273. Monthly Statement**

Each month the Utility Program shall mail to all utility customers a statement detailing the following information:

- (a) The customer's name and account number;
- (b) The types and levels of service used in the current month;
- (c) The billed cost of the current month's service, plus an accounting of bills or charges past due;
- (d) The date that payment is due; and
- (e) The location to mail or deliver payment.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 274. Due Date**

The monthly date on which payment will be due shall be established by Utility Board regulation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 275. Payment Past Due**

Payments not received within 10 days after the established due date are considered past due. The Utility Program shall issue a notice of payment past due to the customer, detailing the payment owed and the consequences for failure to pay. The notice shall be sent no later than the date the next billing is sent out.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 276. Delinquent Account**

If the payment past due is not paid within 10 days after the next regular monthly due date, the account shall be declared delinquent.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 277. Notice of Delinquency**

The Utility Program shall immediately notify the customer in writing once the account has been declared delinquent, and list the sanctions that may be imposed without further notice. Notice of delinquency shall be made by certified mail or such other means to provide proof of receipt by the customer. If a customer feels the notice is incorrect or is aggrieved by the action of the Utility Board they can file a written grievance with the Utility Board as stated in section 237.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 278. Advance Deposits**

The Utility Board may require each new customer to pay an advance deposit equal in amount to the basic monthly rate fees for the first month of service, prior to receiving services. The deposits shall be retained by the Utility Board no longer than one year. The deposits, with interest compounded at passbook rates, shall be credited to the individual customer's utility account balance at the end of the deposit period, providing that the customer's account is not delinquent or in arrears. Any remaining deposit funds will be credited to the customer's account.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 279. Authority and Enforcement**

The Utility Board is hereby authorized by the General Council to collect established fees for service and to impose sanctions and penalties for non-payment. The Utility Board shall enforce its regulations, fee collections and provisions of this Chapter by shutting off water service of any and all violators and delinquent bill-payers or imposing other penalties and sanctions as authorized.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 280. Attachment of Customers Property**

The Utility Board shall not seek to attach customer's property, nor seek to have fines assessed by the Seminole Nation District Court, except in limited cases of blatant or continued abuses or destruction of property.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 281. Penalty Schedule**

The Utility Board shall develop and recommend a penalty schedule for adoption by General Council which outlines specific penalties, fines and assessments for violation and non-compliance with the provision of this Chapter. The penalty schedule shall be reviewed for appropriateness annually by the Utility Board.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 282. Sanctions Authorized**

The following sanctions may be imposed by the Utility Board for failure of the customer to comply with any provisions of this Chapter or with any duly adopted regulation of the Utility Board:

- (a) Termination of service(s)
- (b) Assessment of penalties based on a penalty schedule adopted by regulation of the Utility Board;
- (c) Assessment of late charges based on a schedule adopted by regulation of the Utility Board;
- (d) Assessment of damages resulting from the customer's non-compliance;
- (e) Forfeiture of all or part of a deposit and any accumulated interest;
- (f) Filing suit for damages in a court of competent jurisdiction; and
- (g) Referring violation that may involve criminal conduct to the Tribal Lighthorse, Attorney General or tribal prosecutor.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

### **Section 283. Sanction Guidelines**

The Utility Board shall use the following guidelines when considering the appropriate sanctions to be imposed in any given case:

- (a) Whether the sanction is required by this Chapter or other applicable law, or whether imposition is discretionary;
  - (b) The minimum sanction needed to effect compliance;
  - (c) The irreparable harm to the customer and/or family if the sanction is imposed;
  - (d) The irreparable harm to the operation of the Utility Program, and to the Tribe, if the sanction is not imposed;
  - (e) The customer's past record of compliance or non-compliance, or good faith efforts to achieve compliance;
  - (f) The customer's statement or behavior indicating the likely success of a given sanction securing compliance;
  - (g) The irreparable harm to other persons or property if the sanction is not imposed;
- and
- (h) The effectiveness of similar sanctions in securing compliance in other cases.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 284. Validity, Severability**

The invalidity of any section, clauses, sentence or provision of this Chapter shall not affect the validity of any part of this Chapter which can be given effect without such invalid part or parts.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 285. Amendments**

The Seminole Nation General Council has the power to amend this Chapter at any time. The General Council shall act upon proposed amendments to this Chapter, submitted for action by the Utility Board, by approval or disapproval of such proposed amendments.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 286. Suspension of Chapter**

No employee, officer, contractor or agent of the Seminole Nation is authorized to suspend or alter any of the provisions of this Chapter without the formal approval of the Seminole Nation General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 287. Emergency Response Plan**

An Emergency Response Plan (ERP) shall be prepared and maintained by the Utility Program and included in Appendix A to this Chapter to guide personnel response to ordinary and unusual system malfunctions. The ERP shall consist of a Vulnerability Assessment, Contingency Plan, and Emergency Response Procedures. The ERP shall include standard operating procedures, emergency alert rosters, lists of equipment supplies, technical representative, adjacent utilities, and special need customers (e.g. Kidney dialysis users). Proper staffing, training, and communications shall be maintained as well as maintenance of a suitable repair parts inventory.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 288. Conflict of Interest**

No member of the Utility Board shall participate in the hearing, deliberation, application process, grievance, or selection of a project that is located within two miles of their residence or business interest.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 289. Use of Roads and Right-of-ways**



The Public Utility Board shall have the right to use the public roads and highways of the Seminole Nation, including the right-of-way and all easements pertaining thereto, for telecommunications, electric works, gas distribution, water works and sewage disposal facilities.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

**Section 290. Grant Authorization**

The Utility Board is hereby granted authority from the Seminole Nation General Council to pursue funding from any state, federal, tribal or private granting authority, agency, or foundation. The Utility Board is specifically authorized and requires no additional approval or authority from the Seminole Nation General Council prior to application or acceptance of grant funding awards. All funding agencies shall recognize this law as sufficient authorization from the Seminole Nation of Oklahoma to pursue funding at any time from their respective agency, and shall broadly construe this instrument to meet that end. The Chairperson of the Utility Board, or his or her designee, is hereby authorized to sign any grant applications, award acceptances, certifications, assurances, and any other necessary and related grant funding documents, contracts or agreements.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

## **CHAPTER THREE SEMINOLE NATION WATER CODE**

### **SUBCHAPTER 1 GENERAL PROVISIONS**

#### **Section 301. Declaration of Purposes; Assertion of Authority**

In order to provide for a permanent homeland for the Seminole People; to protect the health, the welfare and the economic security of the citizens of the Seminole Nation; to develop, manage, and preserve the water resources of the Seminole Nation; to secure a just and equitable distribution of the use of water within the Seminole Nations through a uniform and coherent system of regulation; and to provide for the exercise of the inherent sovereign powers of self- government by the Seminole Nation, the Seminole Nation hereby asserts its sovereign authority over all actions taken within the territorial jurisdiction of the Seminole Nation which affect the use of water within the Seminole Nation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 302. Application of the Code**

Upon the effective date of this Code, it shall be unlawful for any person within the territorial jurisdiction of the Seminole Nation, to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the territorial jurisdiction of the Seminole Nation unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except use rights obtained under and subject to this code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 303. Nature of Ownership**

(a) The Seminole Nation is the owner of the full equitable title to all of the waters of the Seminole Nation as defined in Section 304 of this Subchapter, and that title resides undiminished in the Seminole Nation; the United States holds the legal title to those waters solely as trustee for the Seminole Nation.

(b) All rights to the use of the waters of the Seminole Nation are held subject to the overriding, prior and supreme rights, interests and governmental authority of the Seminole Nation, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 304. Waters of the Seminole Nation Defined**

The waters of the Seminole Nation are defined as: (1) all waters reserved at any time for any purpose to the Seminole Nation, and to Seminole Indian lands by the Seminole Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Seminole Nation through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Seminole Nation of Oklahoma; and (4) all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 2**

### **NOTICE OF ENACTMENT AND EFFECT**

#### **Section 305. Notice Required**

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Environmental Protection Office shall, within 30 days after the effective date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this Subchapter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 306. Contents of Notice**

(a) Such public notice shall contain the following statement, prominently displayed in large, boldface type:

NOTICE: AFTER JUNE 1, 2013, NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE TERRITORIAL JURISDICTION OF THE SEMINOLE NATION WHICH AFFECTS THE USE OF WATER WITHIN THE SEMINOLE NATION, UNLESS SUCH ACTION IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE SEMINOLE NATION WATER CODE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE ENVIRONMENTAL PROTECTION OFFICE. COMPLETE COPIES OF THE SEMINOLE NATION WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.

(b) In addition to the foregoing statement, the Director of the Environmental Protection Office may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 307. Notice-How Given**

(a) The Director of the Environmental Protection Office shall give notice of the provisions of this Code as follows:

(b) The notice provided above shall be placed in the Seminole Producer at least once each week over a six-week period.

(c) The notice provided above shall be placed in a prominent and conspicuous location at the Seminole Nation Government Offices and in such other locations as are deemed necessary or appropriate.

(d) The Director of the Environmental Protection Office may take any other steps and post any other notices as is deemed necessary to provide notice of the provisions of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 3**

### **WATER RELATED DUTIES OF THE ENVIRONMENTAL PROTECTION OFFICE**

#### **Section 308. Information Function**

It shall be the duty of the Director of the Environmental Protection Office to gather for Tribal use and for submission to the Seminole Nation General Council information related to the waters administered under this Code. To this end the Director of the Environmental Protection Office shall:

- (a) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters within the Seminole Nation;
- (b) Develop such additional data and studies pertaining to water availability, quality, and use as are necessary to accomplish the objectives of this Code;
- (c) Solicit public comment, consult the Chapters and obtain expert advice when appropriate;
- (d) Investigate water uses and other activities affecting the waters within Seminole Nation to determine compliance with this Code and with applicable regulations, orders, determinations, permits, water quality standards, etc. issued pursuant to this Code;
- (e) Investigate water quality when appropriate; and
- (f) Develop standards and regulations concerning water quality and water allocation and submit them for consideration and approval by the Seminole Nation General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 309. Enforcement Function**

It shall be the duty of the Director of the Environmental Protection Office to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of the Environmental Protection Office may:

- (a) Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, withdrawal, and impoundment, obstructions to the flow of water and other activities adversely affecting water quantity or quality;
- (b) Initiate by means provided herein, proceedings for violations of this Code and the actions taken under this Code; and

(c) Enter upon land to inspect methods of diversion, withdrawal and impoundment, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when necessary, and compel testimony and data, by Seminole Tribal Court subpoena, if necessary, concerning actions affecting the quality or quantity of the waters administered under this Code.

(d) All enforcement actions shall be subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq., and the Seminole Constitution, Article XII, Bill of Rights.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 310. Administrative Function**

In administering this Code, the Director of the Environmental Protection Office may:

- (a) Grant, deny, modify and revoke water use permits;
- (b) Make determinations of water use rights;
- (c) Initiate proceedings to enforce this Code;
- (d) Insure, in coordination with other appropriate agencies, adequate water levels in streams, rivers, ponds, and lakes to protect Seminole traditional religious practices, wildlife conservation and other values;
- (e) Enter appropriate orders;
- (f) Recommend to the Seminole General Council for consideration, adoption, modification, or amendment such regulations as are deemed necessary to implement this code;
- (g) File or intervene in any lawsuit, at the direction of the Seminole General Council, or the Principal Chief of the Seminole General Council;
- (h) Make determinations of availability and need as provided for in Subchapter 7 of the Code;
- (i) Negotiate for and propose to the Seminole General Council the purchase or sale of real or personal property or other interests;
- (j) With the consent of the Seminole General Council enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off the Seminole Nation lands, for appropriate purposes including the administration of interstate streams and groundwaters;

(k) In cooperation with the other committees of the Seminole General Council, determine existing and foreseeable uses of and needs for water and other related resources; and

(l) Take other actions as provided for in this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 311. Water Reserves**

In connection with a determination of availability and need, as provided for in Subchapter 7 or in connection with other actions taken under this Code, the Director of the Environmental Protection Office may establish within particular areas dependent on common water supplies, reserve water supplies which, although subject to existing uses on an interim basis, are set aside for a definite or indefinite term of years for future Tribal and other needs.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 312. Water Assessments**

Whenever the Director of the Environmental Quality Office determines that water not presently available is necessary for purposes and projects beneficial to a part or all of the Seminole Nation and the inhabitants thereof, the Director of the Environmental Quality Office may assess individual water users a fair share of water, in predetermined units for such purposes, according to the relative priorities of the classes of uses.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 313. Designations of Local Management Areas**

The Director of the Environmental Quality Office may, upon the recommendation of other Tribal Departments or any person, isolate and define, within the surface and groundwater systems in which individual water uses are to some degree related by reason of common supply, “local management areas,” such as municipal water districts or irrigation districts, for specialized administration under regulations adopted pursuant to this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



#### **Section 314. Large User Water Permits**

The Director of the Environmental Quality Office may, at his/her option or upon application, recommend for consideration by the Seminole General Council the granting of water use permits for amounts in excess of 1000 acre-feet per year and/or for uses which require assurance of long-term supply. Such permits may be conditioned upon payment of consideration and contain other contractual terms including but not limited to, limited periods of times of use, differing conditions of revocability or terminability; and other conditions providing varying degrees of permanence.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 315. Charges for Water Uses**

Reasonable charges may be imposed by regulations of the Environmental Quality Office for the use of the waters of the Seminole Nation. Such charges shall not apply to domestic uses, stock watering uses, fish and wildlife uses and irrigated agriculture uses. Additional charges may be imposed on users by regulations of the Environmental Quality Office for the operation and maintenance of water delivery systems. Waivers of charges may be granted by the Director of the Environmental Quality Office, if the use is shown to be of benefit to the Seminole Nation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 4**

### **GUIDELINES FOR ADMINISTRATION**

#### **Section 316. General Policy Provisions**

In taking any action under this Code, the Director of the Environmental Protection Office shall be guided by the following basic policy guidelines:

(a) Whenever practicable, actions taken should benefit the Seminole Nation and the members of the Seminole Nation of Oklahoma and further the objective for which the Seminole Nation was created: to provide a permanent home and abiding place for the members of the Seminole Nation of Oklahoma, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the Seminole Nation. If there is presented to the Director of the Environmental Protection Office a conflict between water uses for the benefit of the Seminole Nation or any of the members of the Seminole Nation of Oklahoma and non-Tribal projects or uses, the Director of the Environmental Protection Office may grant such preference as may be required by this Code, and lie in the best interests of the Seminole Nation of Oklahoma and its members.

(b) In taking any action under this Code which may impose substantial economic hardship on persons or entities presently using water, or which threatens degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values, the Director of the Environmental Protection Office shall, in reaching his/her decision, carefully consider and weigh;

- (1) The economic dislocation and hardship which will be imposed by such actions;
- (2) The investment in time, money and other resources made by the parties affected in reliance upon any previous system of distribution and use of water;
- (3) Any other burdens as may be imposed by such action;
- (4) The nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values.

(c) The Director of the Environmental Protection Office, when considering a proposed action, shall balance the adverse effects against the benefits to the Seminole Nation of Oklahoma and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects, and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible, to protect the water resources.

(d) When insufficient water supplies are present for whatever reason or term, the following priority of uses shall be considered in the order in which they are listed:

- (1) Domestic and Municipal Uses;
- (2) Stock Watering Uses;
- (3) Agricultural Uses;
- (4) Instream Needs, for Fish, Wildlife Conservation and Recreational Uses;
- (5) Economic Development Uses including Industrial and Power Uses;
- (6) Other uses.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 317. Guidelines for Making Most Effective Use of Available Resources**

In addition to the policy guidelines contained in the previous section, the Director of the Environmental Protection Office shall take appropriate actions to:

- (a) Insure adequate water supplies;
- (b) Maintain water levels for diversion and withdrawal systems;
- (c) Maintain head and pressure in ground waters;
- (d) Prevent or reduce obstruction of surface water flows;
- (e) Increase efficiency of conveyance systems; increase efficiency in water application; increase return flow; prevent waste and maximize use of the available supply;
- (f) Create and enhance the efficiency of natural and artificial surface and underground storage;
- (g) Enhance natural and artificial recharge of aquifers;
- (h) Define and control interbasin transfers of both surface and ground waters;
- (i) Provide for some degree of overdraft from aquifers when short-term recharge is not possible;
- (j) Minimize interference between competing users of water sources, whether above or below ground;
- (k) Minimize water quality degradation and the adverse effects of water pollution whether from point sources or non-point sources;
- (l) Minimize thermal degradation or the adverse effects of thermal degradation;

- (m) Minimize interaquifer communication;
- (n) Plan for long-term water development;
- (o) Penalize misuse;
- (p) Otherwise insure conformity with the policies and provisions of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 318. Additional Policy Guidelines**

(a) Rivers, streams, lakes and ponds within the Seminole Nation are to be retained substantially in their natural conditions, with the base flows and water levels necessary to provide for preservation of traditional and religious, recreation, wildlife, fish, scenic, aesthetic, and other environmental values, to the extent possible. Withdrawals of water which would conflict with these interests should be authorized only where it is clear that overriding considerations of the public interest and welfare will be served.

(b) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of recreation, fish and wildlife resources in the planning for and construction of water impoundment structures and other artificial obstructions.

(c) Individuals, corporations, groups, associations and other entities shall be required to carry out reasonable practices of water and resource conservation and environmental protection as they relate to the use of waters within the Seminole Nation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 5**

### **DESCRIPTIONS OF USE AND APPLICATIONS FOR PERMIT**

#### **Section 319. Existing Use Inventory**

In order to determine existing uses of water within the Seminole Nation of Oklahoma, the Director of the Environmental Protection Office shall cause an inventory of existing water uses to be made and completed within four (4) years following the effective date of this Code. The inventory shall be based upon the information contained in the Descriptions of Use.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 320. Description of Use - Required**

All persons desiring to continue to operate existing uses must file a Description of Use, as required by this Subchapter, within two (2) years of the effective date of this Code. After such date, it shall be unlawful to continue to operate any user or to continue any other action within the jurisdiction of the Seminole Nation of Oklahoma which affects the waters therein except as authorized by this Subchapter. Individuals or groups making use of a well or other water source operated by another need not file a Description of Use unless the operator fails to do so.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 321. Application for Permit - Required**

Upon the effective date of this Code, all persons desiring to initiate new uses of, or take other actions within the jurisdiction of the Seminole Nation affecting the waters therein shall file an Application for Permit as required by this Subchapter. After such date, it shall be unlawful for any person to make any new use or take any other action within the jurisdiction of the Seminole Nation affecting the waters therein except as authorized by this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 322. Description of Use and Application for Permit - Contents**

Descriptions of Use and Applications for Permit shall be on forms provided by the Director of the Environmental Protection Office and shall include the following information:

- (a) The name and mailing address of the claimant;
- (b) The name, if available or a description of the source or sources from which water is or will be diverted or withdrawn;

- (c) The purpose or purposes for which water is or will be used;
- (d) The quantity of water which is or will be used;
- (e) A legal description, if such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment;
- (f) A description of the method or methods of diversion, withdrawal or impoundment. The description of the method or methods of ground water withdrawals shall be by a Drilling Permit on a form approved by the Director of the Environmental Quality Office;
- (g) A description of how water is or will be applied or consumed, including acreage and crop if the water is for irrigation; the kind and number of stock if the water is for stock watering; and the number of people and/or homes to be served if the water is for domestic or municipal use;
- (h) The best estimate reasonably possible of return flow to the source or sources, including how, when, at what point or points, and with what changes in quality and temperatures;
- (i) The estimated date on which the use or uses began or will be commenced;
- (j) If any pre-existing use is claimed, a description of any documents or programs upon which it is based; any statute or statutes or legal doctrine upon which the use is based; and any pertinent litigation creating or affecting the use;
- (k) The water user's plan for future development of the water use or uses and related activities; and
- (l) Any other information deemed necessary by the Director of the Environmental Quality Office.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 323. Interim Permits**

A Description of Use which is made with respect to a use existing prior to the effective date of this Code shall, until a permit is issued or denied, serve as an interim permit authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Additional uses planned but not commenced prior to the effective date of this Code may be made on an interim basis upon Emergency Certification by the Director of the Environmental Protection Office until a permit covering such uses is issued or until other action is taken under this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 324. Fees**

Each Application for Permit shall be accompanied by a \$25.00 filing fee. Provided, however, that the Director of the Environmental Protection Office may waive payment of such filing fee in cases of demonstrated financial hardship. There is no fee for filing a Description of Use.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 325. Public Notice of Descriptions of Use and Applications for Permit - Initial Notice**

As soon as possible and no more than three years after the effective date of this Code, the Director of the Environmental Protection Office shall divide the Seminole Nation of Oklahoma into hydrologic basins or watersheds in which water uses are to some degree interrelated and prepare:

- (a) A map of the Seminole Nation showing such basins or watersheds;
- (b) A listing for each basin or watershed of each use described and permit applied for, which listing shall include names and addresses of applicants, descriptions of water sources, quantities applied for, points of diversion, withdrawal or impoundment, methods of diversion, withdrawal or impoundment and descriptions of the uses to be made;
- (c) A statement that the applicants described in the listing have applied for permits under the Seminole Nation Water Code and that any persons claiming that their uses may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided for in this Code;
- (d) A brief description of the objection, notice and hearing provisions of this Code and information which will assist the objecting parties in procuring the necessary forms and commencing an objection;
- (e) A statement that any person may comment either orally or in writing on the issuance of any permit; and
- (f) A brief description of the public comment and investigation sections of this chapter. The map, listings, statements and descriptions prepared under the preceding paragraphs shall forthwith be published and posted in the same manner as provided in Section 307 "Notice - How Given," subject to the following exceptions: (1) maps and descriptions of objection procedures may be omitted if deemed impractical; (2) newspaper publications may be limited to four weekly notices; and (3) listings need be published and distributed only in the hydrologic basins or watersheds affected by proposed or existing uses.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 326. Public Notice of Applications for Permit - Continuing Operation**

When additional Applications for Permit are received during the course of the administration of this Code, the Director of the Environmental Protection Office shall, in conformance with the preceding section:

- (a) Include in the listing provided for in Section 325(b) the necessary information concerning the new use or action.
- (b) Prepare a statement that one or more new Applications for Permit have been made and objections may be made to them in accordance with Section 325(c).
- (c) Prepare the descriptions and statements provided in Sections 325(d)-(f).
- (d) The revised listing, statements and descriptions provided for in the preceding paragraphs shall forthwith be published, posted and mailed in the affected area in the same manner as provided for in Section 325, in order to assure adequate notice and an opportunity for hearing to persons who may be adversely affected by the proposed uses or actions.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 327. Objections Affecting Descriptions of Use and Applications for Permit**

Any person or entity whose interests are or may be affected by a water use described and/or applied for, may within 30 days from the date of publishing, and posting of notice that such use has been described and/or applied for, file a formal objection to the issuance of the permit applied for.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 328. Form and Contents of Objections**

- (a) Objections may be made on forms prepared and made available by the Director of the Environmental Protection Office and shall include the name and mailing address of the party objecting; the name of the applicant whose application is objected to; a description of the water use objected to; a short and plain statement or reasons why a permit should not be issued or should be issued in a form different from that applied for; and any suggested conditions or other provisions which should be included in any permit granted.
- (b) Oral objections may be made to the Director of the Environmental Protection Office when it is determined by the Director that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of Environmental Protection Office.



[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 329. Reply by Applicant**

Any applicant for a permit whose use is objected to, may reply in writing or orally in the same manner as provided herein for objections.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 330. Hearings Regarding Issuance of Permits**

Any applicant directly affected or any party objecting in accordance with this Subchapter may request and obtain as a matter of right a hearing on such objection. In addition, the Director of the Environmental Protection Office may schedule a hearing concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed. Provided, that whenever possible hearings concerning proposed or existing uses in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication. Unless otherwise provided for in this Subchapter, notice of such hearings shall be as provided for in Subchapter 9, and shall be given to: the applicants whose uses are objected to; the objecting parties; other persons designated by the objecting parties and applicants; all other persons affected by the proposed use in question and all other persons requesting notice. Unless otherwise provided for in this Subchapter, hearings shall be conducted as provided in Subchapter 9.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 331. Public Comment**

Any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code. It is the policy of the Seminole Nation of Oklahoma that all interested parties be given the opportunity to participate in the decision-making process as set forth in this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 332. Investigation and Review of Permit Issuance**

In addition to gathering information from the objections, comments, and hearings as provided for above, the Director of the Environmental Protection Office may make any reasonable investigation of the facts and circumstances surrounding the permit application; may solicit comments and information from the public and from appropriate governmental agencies; and

may otherwise gather information which will assist in making the decision to issue or deny a permit in accordance with the provisions of this Subchapter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 333. Issuance or Denial of Permits**

As soon as possible after application, hearing, if any, and a reasonable period for public comment shall have passed, and no more than 90 days after the date of the application, if uncontested, or the hearing, if a hearing is held, the Director of the Environmental Protection Office shall review the comments and information gathered with respect to a specific application and either deny a permit or issue a permit in the form provided for in Subchapter 6.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 6**

### **WATER USE PERMITS**

#### **Section 334. Form**

Water use permits issued in accordance with this Code shall be on a form approved by the Resources Committee.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 335. Information Contained**

Each permit shall include:

- (a) The name and mailing address of the permittee;
- (b) The name of, if available, or a description of, the source or sources from which water is or will be diverted, withdrawn or impounded;
- (c) The quantity of water which will be used;
- (d) The legal description, if such is readily available or other description reasonably describing the point or points of diversion, withdrawal or impoundment;
- (e) A description of the method or methods of diversion, withdrawal or impoundment;
- (f) The purpose or purposes for which water is or will be used;
- (g) A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering, and the number of people and/or homes to be served if the water is for domestic or municipal use;
- (h) The approximate date upon which the use or uses permitted begin or will be commenced; and
- (i) Any other information as is deemed necessary and appropriate.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 336. Conditions**

Each water use permit issued pursuant to this Code shall contain whatever conditions are necessary to insure adequate quality and quantities of water; to otherwise further the purposes, policies and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning:

- (a) The source from which water may be diverted, withdrawn or impounded;
- (b) The quantity of water which may be diverted, withdrawn or impounded during any particular time;
- (c) The point or points of diversion, withdrawal or impoundment;
- (d) The method or methods of diversion, withdrawal or impoundment;
- (e) The purposes for which water will be used;
- (f) The method of application;
- (g) The location and purpose of application, including acreage for crops and number of livestock for livestock watering;
- (h) The quantity and quality of return flow;
- (i) The time period during which water may be used;
- (j) Schedules for diversion, withdrawal or impoundment, including optional rotation schedules;
- (k) Provisions for surface or ground water storage of surplus flows;
- (l) Provisions for increasing the efficiency of diversion, withdrawal or impoundment and application;
- (m) Provisions for maintaining minimum pools and streamflows for fish, wildlife, recreation, aesthetic and Seminole religious values;
- (n) Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- (o) Provisions designed to maintain head and pressure in ground waters;
- (p) Provisions designed to prevent or reduce obstruction of surface water flows;
- (q) Provisions designed to minimize point and non-point source pollution, water quality degradation and thermal degradation;
- (r) Provisions designed to enhance recharge of aquifers;

- (s) Provisions designed to define and control interbasin transfers of surface and ground waters;
- (t) Provisions for some degree of overdraft from aquifers when short-term recharge is not possible;
- (u) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- (v) Provisions to minimize interaquifer communication;
- (w) Provisions to insure long term water development;
- (x) Any other provisions necessary to insure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 337. Entry on Land**

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he shall consent to reasonable entry upon his land by Seminole Nation of Oklahoma employees engaged in the administration of this Code. Every permit issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his land.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 338. Effect**

A water use permit issued under this Code constitutes nothing more than Seminole Nation permission to use the water within the territorial jurisdiction of the Seminole Nation, subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water permit issued hereunder shall be construed as creating or recognizing any right other than Seminole Nation of Oklahoma permission to use water, nor shall any water use permit ripen into any interest other than such limited permission.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 339. Revocability**

Unless otherwise indicated, water permits issued under this Code are revocable by the Director of the Environmental Protection Office in accordance with the policies, purposes, guidelines and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. Section 1301 et seq., and the Seminole Nation Constitution, Article XII, Bill of Rights.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 340. Modification**

Water permits are modifiable in accordance with the procedures provided in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. Section 1301 et seq., and the Seminole Nation Constitution, Article XII, Bill of Rights.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 7**

### **DETERMINATION OF AVAILABILITY AND NEED**

#### **Section 341. When Proceeding Available**

(a) Whenever at any time after the Existing Use Inventory is completed an application for a permit covering a new or changed use of, or other action affecting water is made; or a complaint concerning an existing or proposed use, or other action affecting the water is made; and it appears probable to the Director of the Environmental Protection Office that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected;

(b) The Director of the Environmental Protection Office may initiate a proceeding to determine the availability of and need for water in accordance with the provisions of this Subchapter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 342. Purposes**

The purposes of a proceeding to determine availability of and need for water under this Subchapter shall be: to evaluate existing and future needs dependent upon a particular supply; to compute with reasonable certainty the characteristics of a particular supply, including quantity, surface and groundwater levels, rates and directions of flow, rates of recharge, out-of-basin sources, pollution, thermal degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as artificial recharge, storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with the policies and actions of the Seminole Nation; and to make available to other tribal, local state and federal agencies and to members of the public information concerning the waters in question.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 343. Notice of Proceeding**

(a) Whenever a proceeding is initiated under Section 341 of this Subchapter, the Director of the Environmental Protection Office shall provide notice of such proceeding in the same manner as provided in Section 359 to all parties who are using or will use or otherwise affect or rely upon the water supply in question, or will otherwise be directly affected by such proceeding.

(b) Such notice shall state in plain and simple language the reason for initiation of the proceeding; the nature of the proceeding; the geographic area covered by the proceeding; and, as nearly as may be determined, the possible effects of such a proceeding on individual water uses.

(c) The Director of the Environmental Protection Office shall make every reasonable effort to ensure that all persons or entities whose interests are or will be affected by the proceeding have reasonable notice of the nature, scope and possible effects of the proceeding and a reasonable opportunity to prepare for and participate in the proceeding.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 344. Environmental Protection Office - Investigation Initiation**

As soon as the Director of the Environmental Protection Office determines that a proceeding shall be initiated under this Subchapter, he shall define as accurately as possible the area covered by the proceeding and commence an investigation as provided herein.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 345. Environmental Protection Office - Information Gathering**

The Director of the Environmental Protection Office shall initiate an investigation to gather and evaluate all available, pertinent data from whatever sources concerning the water supply and needs for water in question; to formulate proposals concerning the use of the water in question; and to provide other information, alternatives, and recommendations to assist the Resources Committee. Such information, alternatives, and recommendations shall be contained in the report of the Director of the Environmental Protection Office provided for in Section 346 of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013.]

#### **Section 346. Environmental Protection Office - Report**

Upon completion of the investigation provided for in Section 345, and no more than 90 days after the initiation of the investigation, the Director of the Environmental Protection Office shall transmit to the Resources Committee the report concerning the availability of and need for water in the particular area to which the proceeding applies. The report shall include the following:

(a) A geographic and geologic description of the area studied, setting out as precisely as possible the boundaries of the area;

(b) A general description of the water supply in that area, from all sources;

(c) A description of the various characteristics of the water supply which are relevant to present and proposed uses and other actions;



- (d) A computation of the water supply available at particular times and places;
- (e) A description of present and proposed uses of and other actions affecting the water supply in question;
- (f) A description and evaluation of the need for each such present or proposed use or other action;
- (g) A description of possible methods for increasing available water supply;
- (h) A description of economic and technical methods which may be implemented to increase the efficiency of use;
- (i) Alternatives for present uses which will minimize the impacts described in Section 316 of this Code;
- (j) Amounts of water within the particular supply which shall be subject to a reserve as provided in Section 311 of this Code;
- (k) Proposals for assessing varying amounts of water as provided for in Section 312 of this Code; and
- (l) Any additional information and recommendations which the Director of the Environmental Protection Office deems is necessary for inclusion.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 347. Proposed Determination of Availability and Need**

As soon as possible and no more than 30 days after receipt of the report of the Director of the Environmental Protection Office, the Resources Committee shall cause to be prepared a proposed Determination of Availability and Need in accordance with the provisions of this Subchapter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 348. Determination of Availability and Need - Contents**

A Determination of Availability and Need may include the following, either as recommendations or mandatory provisions:

- (a) A description and map of the affected area;

(b) A description of the water supply in the affected area, including a description of the various characteristics of the supply which are especially pertinent to present and proposed water uses within that area;

(c) A description of the various present and future needs for using or affecting the water supply in the area;

(d) A list of priorities to be observed within the affected area;

(e) A list of storage methods which are or may be proposed and implemented;

(f) A description of methods for increasing efficiency;

(g) A description of possible interbasin transfers; and

(h) Other information, provisions and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water supply in question.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 349. Notice of Hearing**

As soon as possible and no more than 30 days after the drafting of a proposed Determination of Availability and Need, the Director of the Environmental Protection Office shall provide notice, in the manner provided for in Section 343, of a public hearing at which interested persons may present oral or written comments concerning the proposed Determination of Availability and Need. Included in the notice shall be a description and map of the affected area; a description of the proceeding to date and a clear statement that copies of the proposed Determination of Availability and Need shall be made reasonably available to interested persons. The notice shall state the date, time and place for a hearing, to be held not less than 30, nor more than 60 days after the date notice is completed.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 350. Hearing**

A hearing shall be held with respect to every proposed Determination of Availability and Need. Whenever possible, such hearings shall be held in the affected area, at a date, time and place which is reasonably convenient to a major portion of the parties affected. At such hearings, the Resources Committee or its designees shall provide a brief oral statement of the purpose of the hearing and a description of the proceeding to date, including the proposed Determination. At least one member of the Resources Committee shall be present and shall preside over the hearing. After the presentation is made by the Resources Committee or its designees, public

comment shall be allowed. Public comment may be limited by reasonable rules adopted by the Resources Committee to insure an opportunity for full comment. Hearings may be continued if necessary to such times and places as are deemed appropriate upon adequate notice.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 351. Final Determination of Availability and Need**

As soon as possible, and not more than 60 days after the public hearing provided for in Section 350, the Resources Committee shall cause to be prepared a final Determination of Availability and Need. Notice of this final Determination shall be made in the same manner as provided for in Section 343 and shall indicate that copies of the Determination are reasonably available for public review.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 352. Subsequent Actions**

Upon completion of the above proceedings, the Director of the Environmental Protection Office shall make copies of the Determination of Availability and Need made under the provisions of this Subchapter reasonably available to parties requesting the same; shall grant, revoke, deny or modify permits in accordance with such Determination; shall enter appropriate orders and take other actions authorized by this Code to prevent overuse and/or pollution in accordance with such Determination; and shall take whatever other actions are necessary and authorized by this Code to assist in the implementation of the Determination and of the policies, provisions and guidelines set forth in this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 353. Appeal**

Appeals from the final Determination of the Availability and Need shall be taken in the same manner as provided for in Subchapter 10 of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## SUBCHAPTER 8 TRANSFER AND LOSS OF RIGHTS

### **Section 354. Transfer, Assignment, Descent, Distribution and Creation of Security Interest**

Permits issued under this Code shall not be subject to transfer, assignment, descent, distribution or creation of any security interest without the express written consent of the Director of the Environmental Protection Office. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Director of the Environmental Protection Office. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a result of the transfer, assignment or creation of a security interest in a water use permit. Every attempt should be made to conform with the purposes of Subchapter 6 governing Descriptions of Use and Applications for Permit. Heirs and successors in interests of permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 355. Loss By Nonuse**

(a) Any right to use or otherwise affect in any way water within the territorial jurisdiction of the Seminole Nation, regardless of its origin, shall become void and revert, to the extent of the abandonment or nonuse, to the Seminole Nation when the holder of such use right wholly or partially abandons the same, or voluntarily fails without sufficient cause to use all or a portion of the water available under such use right for a period of five consecutive years. "Sufficient cause" shall include:

- (1) Drought or other unavailability of water;
- (2) Active service in the armed forces of the United States;
- (3) The operation of legal proceedings;
- (4) The application of any laws restricting water use;
- (5) Incarceration in a penal institution;
- (6) Confinement in a mental institution, whether voluntary or involuntary;
- (7) Incompetence by reason of age or mental incapacity;
- (8) Provisions of future use as provided in this Code; or

- (9) Other causes of nonuse beyond the control of the holder or holders of the use right claimed.

(b) Before such rights to use water may be deemed lost by nonuse or abandonment, the Director of the Environmental Protection Office shall serve notice on the holders of such use rights to appear at a hearing to be held before the Director of the Environmental Protection Office not less than 30 days after the mailing or personal service of such notice and show cause why their use rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Subchapter 9 of this Code governing notice and hearing.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 356. Loss By Adverse Possession, Prescription, Estoppel, or Acquiescence**

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel or acquiescence.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 357. Outside Proceedings**

No use right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian Civil Rights Act, 25 U.S.C. Section 1301 et seq., and the Seminole Nation Constitution, Article XII, Bill of Rights.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 9**

### **GENERAL HEARING PROVISIONS**

#### **Section 358. Applicability**

Unless otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this Subchapter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 359. Notice**

(a) All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this Subchapter. In addition, notice of hearings shall be published in one paper having general circulation in the affected area and notice of hearing shall be posted in prominent places in the affected area, as set forth in Subchapter 2 of this Code.

(b) Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and adequate opportunity to be heard.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 360. Time and Place of Hearing**

Whenever possible hearings shall be held at the offices of the Director of the Environmental Protection, at a date, time and place which is convenient for a major portion of the parties affected.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 361. Continuances**

Continuances shall be freely granted when the ends of justice so require and in order to assure adequate notice and opportunity to be heard.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 362. Presiding Officer**

The Director of the Environmental Protection Office shall designate a qualified and impartial hearing officer to preside over hearings provided for in this Subchapter.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 363. Forms of Evidence**

Evidence may be submitted in any practical form including oral testimony, written evidence, and descriptive evidence. The ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 364. Consolidation of Hearings**

Whenever possible, hearings concerning proposed or existing actions in a particular watershed or area shall be consolidated to promote efficiency, minimize expense or hardship, and to prevent duplication.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 365. Recording**

Hearings shall be recorded by mechanical means, provided, that any person may provide at his own expense for a stenographic record.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 366. Decision**

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the Hearing Officer shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Director of the Environmental Protection Office. The Director may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a final decision, including an explanation for any changes made in any recommendation of the Hearing Officer, within thirty days of such recommendation. Such

decision shall be published and served upon the parties in the same manner as provided in Section 359 governing notice of hearings.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **SUBCHAPTER 10 APPEALS**

### **Section 367. Appeals Provided For**

There shall be no appeal from actions taken under this Code except as provided herein. Appeals of final actions shall be to the Administrative Appeals Board of the Seminole Nation according to the Administrative Appeal Boards ordinance.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 368. Final Action - Jurisdiction**

The Administrative Appeals Board shall have no jurisdiction to hear any appeal initiated pursuant to this Subchapter unless the Appeal is filed with the Administrative Appeals Board within 30 days after the date of the final action. "Final action" means any action taken under this Code for which no further consideration by the Director of the Environmental Protection Office or the Resources Committee is required.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 369. Notice of Appeal - Service**

Upon filing of the Appeal the party appealing the final action shall forthwith, and no more than 10 days after filing of the Notice of Appeal, cause the Notice of Appeal to be served on all parties to the proceeding being appealed from, and on the Director of the Environmental Protection Office.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 370. Transmittal of Record**

(a) Upon receipt of the Notice of Appeal, the Director of the Environmental Protection Office shall cause all pertinent documents in their possession, and any other articles of evidence in their possession, to be transmitted to the Administrative Appeals Board.

(b) Any party to an appeal may at his own expense, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Administrative Appeals Board. Provided, that the Director of the Environmental Protection Office in his discretion shall bear the financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 371. Scope of Review**

The Court of Appeals, in reviewing the final action appealed from, shall limit its review to the issues and the evidence which were before the Director of the Environmental Protection Office at the time of the final action appealed from. The Administrative Appeals Board may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed from. Provided, final actions appealed from may only be reversed, modified or remanded when they are arbitrary, capricious unsupported by substantial evidence, not in substantial conformity with this Code or otherwise contrary to law.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 372. Administrative Appeals Board - Additional Powers**

(a) The Administrative Appeals Board may on its own motion or upon motion of any party dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.

(b) In addition, the Administrative Appeals Board may stay the operation of final actions appealed from, in whole or in part, and may, when the ends of justice require, provide for a supersedeas bond or other security from the parties to the appeal

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 11**

### **DEFINITIONS**

#### **Section 373. Director of the Environmental Protection Office**

Director of the Environmental Protection Office means the Executive Director of the Environmental Protection Office of the Seminole Nation, his designated representative or agent, or his successor in responsibility, as determined by the Chairman of the Seminole General Council.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 374. Domestic Use**

“Domestic Use” means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 375. Effective Date**

The “effective date” referred to herein shall be the date of the resolution of the Seminole General Council approving adoption of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 376. Municipal Use**

“Municipal Use” means all reasonable water uses necessary in carrying out the functions of municipal government, local chapter government and growth centers or towns.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 377. Person**

“Person” includes an individual; a partnership; a corporation, whether public and private; and a governmental entity, unit or agency, whether tribal, local, state or federal.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 12**

### **PROHIBITED ACTS**

#### **Section 378. Waste of Water Prohibited**

No waters that have been withdrawn, diverted, impounded or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion, withdrawal and impoundment works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions, withdrawals and impoundments such shall not be construed as waste if reasonable diligence is shown by the permittee in effecting necessary repairs.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 379. Unauthorized Actions Affecting Waters Prohibited**

Whenever any use or other action affecting the use of waters within the territorial jurisdiction of the Seminole Nation is required by this Code to be authorized under the provisions of this Code, it shall be a violation of this Code to knowingly make such use or take such other action without the authorization required.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 380. Obstruction of Seminole Nation Employees**

The willful obstruction of or interference with Seminole Nation employees performing their lawful duties under this Code shall be a violation of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 381. Misstatement of Material Facts**

The knowing misstatement of any material fact by any person or entity when providing information required by this Code, with respect to Descriptions of Use and Applications for Permit or otherwise, shall be a violation of this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 382. Sanctions for Code Violations**

Violations of this Chapter may subject the persons(s) or entity(ies) responsible to forfeiture or suspension of rights to the use of water administered under this Code. Sanctions may also include the requirement of payment for water improperly used or adversely affected by the improper use; payment of the costs for all associated remedial actions administrative costs incurred by the Seminole Nation as a result of the violation; and payment of such other costs as are necessary to render the Seminole Nation and its inhabitants' whole. Sanctions shall be imposed by the Director of the Environmental Protection Office subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. Section 1301 et seq., and the Seminole Nation Constitution, Article XII, Bill of Rights.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **SUBCHAPTER 13**

### **MISCELLANEOUS PROVISIONS**

#### **Section 383. Severability**

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the Code can be given effect without the invalid provision or application; and to this end the provisions of this Code are declared to be severable.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 384. Construction**

This Code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes, and provisions.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 385. Review of Authority**

The Director of the Environmental Protection Office shall, from time to time, review the authority granted to them under this Code and propose amendments and additions thereto to the Seminole General Council in order to improve administration under this Code.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 386. Extension of Time Limits**

The time limits provided for in various places of this Code may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 387. Representation**

Parties appearing at hearings and other proceedings provided for this Code may represent themselves or may be represented by individuals licensed to practice before the Courts of the Seminole Nation if they so desire.

[HISTORY: Enacted by TO 2013-07, May 14, 2013; section numbering scheme of this Chapter 3 modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



**TITLE 20A  
REAL PROPERTY ACQUISITION  
BY FEDERALLY FUNDED PROGRAMS  
INDEX**

<b>TITLE 20A REAL PROPERTY ACQUISITION BY FEDERALLY FUNDED PROGRAMS INDEX.....</b>	<b>i</b>
<b>TITLE 20A REAL PROPERTY ACQUISITION BY FEDERALLY FUNDED PROGRAMS .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS .....</b>	<b>1</b>
Section 101. Acquisition Requirements .....	1
Section 102. Acquisition Policies.....	2
Section 103. Appraisal Criteria .....	4
Section 104. Appraisal Review .....	6
Section 105. Acquisition of Tenant-Owned Improvements .....	6
Section 106. Title Transfer Incidental Expenses.....	7
Section 107. Certain Litigation Expenses.....	8
Section 108. Donations.....	8
<b>CHAPTER TWO NAHASDA PROPERTY ACQUISITION PROCEDURES .....</b>	<b>9</b>
Section 201. Scope of Procedures .....	9

**TITLE 20A**  
**REAL PROPERTY ACQUISITION**  
**BY FEDERALLY FUNDED PROGRAMS**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Acquisition Requirements**

(a) For the purposes of this Title, “Nation” shall mean the Seminole Nation of Oklahoma, including any agency, department or instrumentality of the Nation, including, without limitation, the Seminole Nation Division of Commerce, Land Acquisitions Board, and the Seminole Nation Business and Regulatory Commission.

(b) General. The requirements of this Chapter apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

- (1) Voluntary transactions that meet all of the following conditions:
  - (A) No specific site or property needs to be acquired, although the Nation may limit its search for alternative sites to a general geographic area. Where the Nation wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.
  - (B) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
  - (C) The Nation will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
  - (D) The Nation will inform the owner of what it believes to be the fair market value of the property.
- (2) Acquisitions for programs or projects undertaken by the Nation that receive Federal financial assistance but do not have authority to acquire property by eminent domain, provided that the Nation shall:
  - (A) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and
  - (B) Inform the owner of what it believes to be fair market value of the property.

- (3) The acquisition of real property from a Federal agency, State, or State agency, if the Nation does not have authority to acquire the property through condemnation.
- (4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.
- (5) Acquisition for a program or project that is undertaken by, or receives Federal financial assistance from, the Tennessee Valley Authority or the Rural Electrification Administration.

(c) Less-than-full-fee interest in real property. In addition to fee simple title, the provisions of this Chapter apply when acquiring fee title subject to retention of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension is 50 years or more, and to the acquisition of permanent easements.

(d) Federally-assisted projects. For projects receiving Federal financial assistance, the provisions of sections 102 - 105 apply to the greatest extent practicable under State law.

(e) Restricted Seminole Allotments. Where the property to be acquired is a restricted Seminole allotment, the provisions and procedures of the Act of Congress of August 4, 1947, shall control in the event of any conflict between said Act and this Title.

[HISTORY: Enacted by TO 2011-03, March 5, 2011; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 102. Acquisition Policies**

(a) Expeditious acquisition. The Nation shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) Notice to owner. As soon as feasible, the owner shall be notified of the Nation's interest in acquiring the real property and the basic protections, including the Nation's obligation to secure an appraisal, provided to the owner by law and this part.

(c) Appraisal, waiver thereof, and invitation to owner.

- (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in section 102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.
- (2) An appraisal is not required if the owner is donating the property and releases the Nation from this obligation, or the Nation determines that an appraisal is unnecessary because the valuation problem is uncomplicated

and the fair market value is estimated at \$2,500.00 or less, based on a review of available data.

(d) Establishment and offer of just compensation. Before the initiation of negotiations, the Nation shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, the Nation shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- (2) A description and location identification of the real property and the interest in the real property to be acquired.
- (3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) Basic negotiation procedures. The Nation shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with section 106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Nation shall consider the owner's presentation.

(g) Updating offer of just compensation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Nation shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Nation shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) Coercive action. The Nation shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Nation official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) Payment before taking possession. Before requiring the owner to surrender possession of the real property, the Nation shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Nation's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Nation may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) Uneconomic remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Nation shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

(l) Inverse condemnation. If the Nation intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) Fair rental. If the Nation permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Nation on short notice, the rent shall not exceed the fair market rent for such occupancy.

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

### **Section 103. Appraisal Criteria**

(a) Standards of appraisal. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Nation shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions that, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

- (1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

- (2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
- (3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Nation, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that is sufficient to support the appraiser's opinion of value.
- (4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- (5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- (6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) Influence of the project on just compensation. To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value of the retained improvement.

(d) Qualifications of appraisers.

- (1) The Nation shall use appraisers who are approved by the Bureau of Indian Affairs and who are familiar with property values in and around Seminole County, Oklahoma.
- (2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to section 103(a), and the Nation uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance

with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.) [57 FR 33264, July 27, 1992, as amended at 57 FR 53294, Nov. 9, 1992 (effective date December 31, 1992), and as may be hereafter amended].

(e) Conflict of interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Nation that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Nation may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500.00, or less.

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

#### **Section 104. Appraisal Review**

The Nation shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with section 103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

#### **Section 105. Acquisition of Tenant-Owned Improvements**

(a) Acquisition of improvements. When acquiring any interest in real property, the Nation shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) Improvements considered to be real property. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real

property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) Appraisal and establishment of just compensation for tenant-owned improvements. Just compensation for a tenant-owned improvement is the amount that the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.

(d) Special conditions. No payment shall be made to a tenant-owner for any real property improvement unless:

- (1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Nation all of the tenant-owner's right, title, and interest in the improvement; and
- (2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
- (3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) Alternative compensation. Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law. [54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

#### **Section 106. Title Transfer Incidental Expenses**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

- (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Nation. However, the Nation is not required to pay costs solely required to perfect the owner's title to the real property; and
- (2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- (3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Nation obtains title to the property or effective possession of it, whichever is earlier.



(b) Whenever feasible, the Nation shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Nation.

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

#### **Section 107. Certain Litigation Expenses**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Nation cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Nation other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Nation effects a settlement of such proceeding.

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

#### **Section 108. Donations**

An owner whose real property is being acquired may, after being fully informed by the Nation of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Nation as such owner shall determine. The Nation is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Nation from such obligation, except as provided in section 102(c)(2).

[HISTORY: Enacted by TO 2011-03, March 5, 2011.]

## **CHAPTER TWO**

### **NAHASDA**

### **PROPERTY ACQUISITION PROCEDURES**

#### **Section 201. Scope of Procedures**

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

(a) Real Property acquisition requirements. The acquisition of real property for an assisted activity is subject to 49 CFR Part 24, subpart B. Whenever the Nation does not have the authority to acquire the real property through condemnation, it shall:

- (1) Before discussing the purchase price, inform the owner:
  - (A) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the Nation from accepting a donation or purchasing the real property at less than its fair market value.
  - (B) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.
- (2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The Nation shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the Nation of its approval or disapproval.

(b) Minimize displacement. Consistent with the other goals and objectives of this part, the Nation shall take all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project conducted pursuant to NAHASDA.

(c) Temporary relocation. The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the project. Such residential tenants and homebuyers shall be provided:

- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

- (A) The date and approximate duration of the temporary relocation;
- (B) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;
- (C) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and
- (D) The provisions of paragraph (c)(1) of this section.

(d) Relocation assistance for displaced persons. A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(e) Appeals to the Nation. A person who disagrees with the Nation's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Nation.

(f) Responsibility of Nation.

- (1) The Nation shall certify that it will comply with the URA, the regulations at 49 CFR Part 24, and the requirements of this section. The Nation shall ensure such compliance notwithstanding any third party's contractual obligation to the Nation to comply with the provisions in this section.
- (2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the Nation from any other source.
- (3) The Nation shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) Definition of displaced person.

- (1) For purposes of this section, the term "displaced person" means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term "displaced person" includes, but is not limited to:

- (A) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.
- (B) Any person, including a person who moves before the date described in paragraph (g)(1)(A) of this section, that the Nation determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.
- (C) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the agreement between the Nation and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
  - (i) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or
  - (ii) 30 percent of gross household income.
- (D) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:
  - (i) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or
  - (ii) Other conditions of the temporary relocation are not reasonable.
- (E) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:
  - (i) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or
  - (ii) Other conditions of the move are not reasonable.

- (2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if:
- (A) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a “displaced person” or for any assistance provided under this section as a result of the project.
  - (B) The person is ineligible under 49 CFR 24.2(g)(2).
  - (C) The Nation determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.
- (3) A Nation may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the agreement covering the rehabilitation or demolition. (See 49 CFR part 24).

[HISTORY: Enacted by TO 2011-03, March 5, 2011; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 21  
LAWS  
INDEX**

<b>TITLE 21 LAWS INDEX .....</b>	<b>i</b>
<b>TITLE 21 LAWS.....</b>	<b>1</b>
<b>CHAPTER ONE FORM OF LAWS .....</b>	<b>1</b>
Section 101. Definitions .....	1
Section 102. Presentation, Debate, and Approval of Ordinances and Resolutions.....	1
Section 103. Form of Ordinances and Resolutions .....	2
Section 104. Execution and Attestation.....	2
Section 105. Codification of Ordinances .....	3
Section 106. Maintenance of Records .....	3
Section 107. Certification of Authenticity .....	3
<b>CHAPTER TWO CODIFICATION OF LAWS.....</b>	<b>4</b>
Section 201. Code of Laws Established .....	4
Section 202. Code of Laws--Titles .....	4
Section 203. Non-substantive Amendments Authorized.....	6
Section 204. Classification and Codification of Previously Enacted Ordinances.....	7
Section 205. Effect of Ordinances.....	7
Section 206. Classification of Newly Enacted Ordinances .....	7
Section 207. Regular Update of Code of Laws.....	7
Section 208. Chapter Title .....	8
Section 209. Prior Resolutions and Ordinances Upheld.....	8

**TITLE 21**  
**LAWS**  
  
**CHAPTER ONE**  
**FORM OF LAWS**

**Section 101. Definitions**

(a) A "motion" is a verbal statement by a member of the General Council by which such member submits a proposed measure for consideration and action by the General Council.

(b) A "resolution" is the formal expression of the opinion or will of the General Council relating to some specific matter or thing, adopted by vote following a duly seconded motion to approve such resolution.

(c) An "ordinance" is the written law of the Seminole Nation intended to permanently direct and control matters applying to persons or things in general, adopted by vote of the General Council following a duly seconded motion to approve such ordinance. The term "ordinance" may be used interchangeably with the word "law" or "statute."

[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991.]

**Section 102. Presentation, Debate, and Approval of Ordinances and Resolutions**

(a) Ordinances and resolutions may be presented to the General Council of the Seminole Nation at any regular or special meeting. Ordinances and resolutions shall be placed on the floor for debate and roll call vote by proper motion seconded by members of the General Council. Debate may then be had, followed by roll call vote. Unless provided otherwise by the Constitution, all ordinances and resolutions shall be deemed to have been enacted by the General Council upon a majority vote of those Council members present and voting at a meeting at which a quorum of fifteen members is present. All verbal ordinances and resolutions passed shall be documented not only in the minutes of the General Council, but shall be also be documented in the form of separate ordinance and resolution documents prepared by the Attorney General and assigned appropriate ordinance and resolution numbers consistent with the provisions of this act, and shall be separately executed by the Chief and attested by the Secretary of the General Council.

(b) In the absence of an Attorney General, the General Council and/or the Principal Chief shall authorize and designate the General Council Secretary to draft in proper form ordinances and resolutions for presentation to the General Council.

[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991; amended by TO 93-06, January 23, 1993; amended by TO 98-03,  
December 5, 1998.]

### **Section 103. Form of Ordinances and Resolutions**

All ordinances presented to the General Council of the Seminole Nation of Oklahoma shall be in writing, provided that the General Council may pass a verbal ordinance if the Council adopts a motion that an emergency exists, requiring adoption of a verbal ordinance. All ordinances and resolutions presented shall be substantially in the following form:

(a) Number. Each ordinance and resolution, upon enactment and approval as herein set forth, shall bear at the top the words, "Ordinance No." or "Resolution No.", followed by the correct number assigned to said ordinance or resolution. All ordinances and resolutions which are enacted and approved shall be numbered first with the last two digits of the year in which the ordinance or resolution is adopted. Immediately following the year digits shall be a dash. The first ordinance passed in a given year shall be assigned the number "one" immediately after the dash. Each successive ordinance adopted during the year shall be assigned a consecutive ascending number. The first resolution passed in a given year shall be assigned the number "one" immediately after the dash. Each successive resolution adopted during the year shall be assigned a consecutive ascending number.

(b) Title. Following the ordinance or resolution number shall be the title of the ordinance or resolution, which title shall set forth the purpose and content of the ordinance or resolution.

(c) Ordinance Enacting Clause and Text. Following the title of each ordinance shall appear the enacting clause, in the following words, "Be it enacted by the General Council of the Seminole Nation of Oklahoma." The text of the ordinance shall then follow in appropriately designated sections where need be.

(d) Resolution Enacting Clause and Text. Following the title of each resolution shall appear the following words: "Be it resolved by the General Council of the Seminole Nation of Oklahoma." The findings related to said resolution shall then immediately follow, followed in turn by the text of the action resolved by the General Council.

(e) Approval Information. Ordinances and resolutions which are enacted by the General Council shall reflect the date of passage, the number of votes for and against the ordinance, the number of council members constituting a quorum, together with a statement that the ordinance or resolution was passed by the General Council of the Seminole Nation, and the place where the General Council was sitting at the time of passage.

[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991.]

### **Section 104. Execution and Attestation**

All ordinances and resolutions shall be finalized, executed, and attested in accordance with these provisions not later than ten (10) days following their enactment by the General Council.



[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991.]

**Section 105. Codification of Ordinances**

All ordinances shall be codified in accordance with the official codification system of the Seminole Nation, and shall appear in codified form in the official Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991.]

**Section 106. Maintenance of Records**

Original signed minutes, original signed ordinances, and original signed resolutions shall be kept in a locked fireproof file cabinet or in a fireproof safe in the office of the Council Secretary at the Seminole Nation Tribal Office. It shall be the responsibility of the Council Secretary to maintain General Council meeting minutes, ordinances, and resolutions in a manner consistent with the requirements of this Act, and the Council Secretary shall be the official custodian of said records.

[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991.]

**Section 107. Certification of Authenticity**

(a) At the time of attestation to an original ordinance or resolution, the Council Secretary shall prepare three certified copies of each ordinance and resolution enacted, and shall provide two of said copies to the Office of the Principal Chief of the Seminole Nation, and shall place one copy in the General Council files. Additional certified copies shall be prepared by the Secretary as needed upon request.

(b) Certification shall be accomplished by placing the seal of the Seminole Nation on the document, along with the following verification of authenticity upon the document: "I certify that I am the duly appointed, qualified, and acting Secretary of the General Council of the Seminole Nation. I further certify that this document is a true and correct copy of the original Ordinance/Resolution (circle one) No. Executed this day of\_, 20 . [Signature]"

[HISTORY: Enacted by TO 70-1; repealed by TO 91-03, April 13, 1991;  
replaced by TO 91-09, August 29, 1991; codified by TO 91-12, November 16,  
1991; subsection numbering scheme modified on August 26, 2016 pursuant to  
authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO CODIFICATION OF LAWS**

### **Section 201. Code of Laws Established**

The Code of Laws of the Seminole Nation of Oklahoma is hereby established, which shall consist of all laws (ordinances) enacted by the General Council of the Seminole Nation of Oklahoma, placed in a code form pursuant to the provisions of sections 202 et seq. herein.

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

### **Section 202. Code of Laws--Titles**

The laws of the Seminole Nation of Oklahoma, shall be classified by subject matter and codified in the appropriate titles of the Code of Laws of the Seminole Nation of Oklahoma, in accordance with the following classification system, provided that additional titles may be added by law duly enacted by the General Council when needed:

TITLE 1	Appellate Procedure
TITLE 1A	Arts & Crafts
TITLE 2	Attorney General
TITLE 3	Civil Procedure
TITLE 3A	Business & Corporate Regulatory
TITLE 4	Corporations
TITLE 4A	Limited Liability Companies
TITLE 5	Court Administration TITLE
6	Criminal Offenses
TITLE 6A	Domestic Violence
TITLE 6B	Methamphetamine & Related Controlled Dangerous Substances
TITLE 6C	Sex Offender Registration
TITLE 7	Criminal Procedure
TITLE 8	Economic Development
TITLE 9	Education
TITLE 10	Elections

TITLE 11	Employees
TITLE 11A	Seminole Nation Employment Rights Act
TITLE 12	Environmental Health & Safety
TITLE 13	Evidence
TITLE 13A	Family
TITLE 13B	Domestic Relations
TITLE 13C	Adoptions
TITLE 14	Finance
TITLE 15	Gaming
TITLE 16	General Council
TITLE 16A	Seminole Nation Independence Day
TITLE 17	Health
TITLE 18	Housing
TITLE 18A	Judgment Fund Programs
TITLE 19	Juvenile
TITLE 20	Land Use
TITLE 20A	Real Property Acquisition
TITLE 21	Form of Laws
TITLE 22	Membership
TITLE 23	Open Meetings (Reserved)
TITLE 24	Police & Law Enforcement
TITLE 25	Principal Chief
TITLE 26	Recreation
TITLE 27	Securities (Reserved)
TITLE 28	Tobacco & Gas Distribution

TITLE 29	Commercial
TITLE 30	Gaming Vendor Taxation
TITLE 31	Road Committee & Transportation Policy & Procedures
TITLE 32	Veterans
TITLE 33	Oil & Gas Severance Code
TITLE 34	Seal Control Act

[HISTORY: Enacted by TO 91-12, November 16, 1991; amended on June 13, 2016 to add newly codified Title 11A, pursuant to authority granted by SNC Title 21, § 203; amended by TO 20-10, March 7, 2020.]

**Section 203. Non-substantive Amendments Authorized**

The following amendments of prior laws (ordinances) contained in the attached Code of Laws are hereby expressly approved:

- (a) Minor grammatical corrections;
- (b) Changes in section numbers;
- (c) Addition of headings in sections;
- (d) Addition of title numbers, and addition of chapter numbers within titles;
- (e) Merging of laws (ordinances) addressing the same subject matter, in a manner consistent with express and implied repeals of prior laws;
- (f) Amendment of language in prior laws dealing with salary ranges, stipends or other forms of compensation to the Principal Chief, Assistant Chief, Treasurer, General Council members, Committee members, and tribal employees, said amendments appearing in the following provisions of the attached Code of Laws:
  - Title 11, Sections 201-203.
  - Title 14, Section 102.
  - Title 16, Sections 404, 501, 502, 601 and 602.
- (g) Merger and reorganization of taxation ordinances required for placement in code form, said amended taxation laws appearing in Title 28.
- (h) Any other minor amendments which did not affect the substance of the original law (ordinance).

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

#### **Section 204. Classification and Codification of Previously Enacted Ordinances**

The ordinances of the Seminole Nation of Oklahoma, enacted from the time of the approval of the Constitution of the Seminole Nation in 1969 through the General Council meeting held on August 29, 1991, as amended pursuant to section 203 above, are hereby classified by subject matter and codified in the appropriate titles of the Code of Laws of the Seminole Nation of Oklahoma, and the attached Code of Laws shall hereinafter be the sole law of the Seminole Nation in effect as of August 31, 1991; provided that all laws (ordinances) which have been or which may have been omitted from the Code of Laws attached hereto due to the repeal of such ordinances, inconsistencies between such ordinances and later ordinances, loss of such ordinances, failure of the General Council to place such ordinances in written form, or due to the lack of access to such ordinances for any other reason, are hereby repealed, and shall have no force and effect from this date forward.

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

#### **Section 205. Effect of Ordinances**

The codification of the laws of the Seminole Nation of Oklahoma shall have no effect upon the validity of any resolutions, which are not in the nature of permanent general laws, and which are not subject to codification; provided that no resolution shall be viewed as taking any precedence over any inconsistent ordinance, nor shall an enactment which should have been in the form of an ordinance but which was incorrectly labeled a resolution, be treated as an ordinance until such time as it is placed in the proper form of a law.

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

#### **Section 206. Classification of Newly Enacted Ordinances**

Hereinafter, all ordinances enacted by the General Council of the Seminole Nation shall include a statement as to where such ordinances shall be placed in the Code of Laws; provided, that in the event that such statement is omitted from a law, the law shall be classified and placed in an appropriate location in the Code of Laws by the Attorney General of the Seminole Nation, and the legal history of each section of a law shall be referenced by the Ordinance Number and the date of enactment of the law.

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

#### **Section 207. Regular Update of Code of Laws**

An updated copy of the Code of Laws shall be prepared by the Attorney General following each Council meeting, and at a minimum shall be maintained at all times in the office of the Attorney General, the office of the General Council Secretary, the Office of the Principal Chief, the Court Clerk's Office, and in the Library of the Seminole Nation. Updated copies of the Code of Laws shall be maintained on computer in the Executive Office and shall be provided to General Council members on an annual basis if funds are available for printing expenses.

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

**Section 208. Chapter Title**

This law shall be entitled "Chapter Two, Codification of Laws," and shall be placed in the Code of Laws of the Seminole Nation under Title 21, "Laws", with section numbers to be renumbered as sections 201 through Section 208.

[HISTORY: Enacted by TO 91-12, November 16, 1991.]

**Section 209. Prior Resolutions and Ordinances Upheld**

The General Council of the Seminole Nation of Oklahoma, through the legal effect of ratification, hereby upholds all resolutions and ordinances previously resolved and enacted, so long as the particular resolutions and ordinances do not individually conflict with the Seminole Constitution.

[HISTORY: Enacted by TO 2003-15, September 27, 2003.]

# TITLE 22 MEMBERSHIP INDEX

<b>TITLE 22 MEMBERSHIP INDEX .....</b>	<b>i</b>
<b>TITLE 22 MEMBERSHIP .....</b>	<b>1</b>
Section 101. Enrollment Office of the Seminole Nation .....	1
Section 101-A. Membership Appeals Board.....	1
Section 102. Membership Requirements .....	1
Section 103. Relinquishment of Seminole Membership.....	3
Section 104. Enforcement of Dual Enrollment Prohibition .....	3
Section 105. Enrollment Application Requirements .....	4
Section 106. Processing of Applications.....	5
Section 107. When and Where to File an application.....	6
Section 108. What the Application Must Contain.....	6
Section 109. Documentation .....	7
Section 110. Review of Application .....	7
Section 111. Tribal Membership Committee .....	7
Section 112. Enrollment Decision .....	7
Section 113. Appeals of Disenrollment Decisions, Denials of Application for Membership or Determination of Seminole Blood Quantum .....	8
Section 114. REPEALED .....	9
Section 115. AMENDED AND RE-CODIFIED .....	9
Section 116. AMENDED AND RE-CODIFIED .....	10
Section 117. Membership Rolls .....	10
Section 117-A. Automatic Correction of Certain Blood Quantum Errors by Enrollment office.....	11
Section 118. Amendments and Repeals; Effective Dates .....	11

## **TITLE 22**

### **MEMBERSHIP**

#### **Section 101. Enrollment Office of the Seminole Nation**

(a) Establishment. There is hereby established an Enrollment Office of the Seminole Nation of Oklahoma.

(b) Duties. The duties of the Enrollment Office are to

- (1) assist in the enrollment as members of the Nation all eligible applicants;
- (2) maintain all enrollment records related to tribal membership;
- (3) verify tribal membership of persons seeking services and benefits from other programs of the Nation; and
- (4) perform all other duties related to enrollment of tribal members for tribal purposes.

(c) Nothing contained in Title 22 shall be construed to apply to enrollment of tribal members for purposes of per capita distribution of judgment funds, which shall be governed by future amendments to Title 22, if enrollment for purposes of per capita distribution shall become necessary in the future.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-07, March 6, 1993; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 101-A. Membership Appeals Board**

Repealed.

[HISTORY: Enacted by TO 93-04, January 23, 1993; amended by TO 93-07, March 6, 1993; repealed by TO 93-22, November 6, 1993.]

#### **Section 102. Membership Requirements**

(a) Rolls. The membership of the Seminole Nation shall consist of all Seminole citizens whose names appear on the final rolls of the Seminole Nation of Oklahoma approved pursuant to Section 2 of the Act of April 26, 1906 (34 Stat. 137) and their descendants.

(b) Adopted Persons. Persons adopted by a member of the Seminole Nation may be enrolled only if they meet the requirement for enrollment through their natural parents, children of Seminole blood adopted by non-members may be enrolled if they establish eligibility through their natural parent or parents.



(c) Dual Enrollment Prohibition. An enrolled member of another Indian tribe shall not be eligible for membership in the Seminole Nation of Oklahoma, pursuant to the following requirements:

- (1) Person First Enrolled with Other Tribe Ineligible for Seminole Membership; Disenrollment. Any person who was validly enrolled with another Indian tribe prior to applying for membership with the Seminole Nation shall not be eligible for membership in the Seminole Nation, regardless of whether he relinquishes membership in the other tribe. Any member found in violation of this prohibition shall be disenrolled. Any person who seeks to apply for membership with the Seminole Nation on or after January 23, 1993 and who signs a sworn request for enrollment application stating that he has ever been validly enrolled with another Indian tribe shall not be eligible to apply for membership in the Seminole Nation of Oklahoma, regardless of whether he relinquishes membership in the other tribe.
- (2) Person First Enrolled With Seminole Nation and Dual Enrolled. Any member of the Seminole Nation who was enrolled with another Indian tribe after obtaining his membership status with the Seminole Nation and who is currently enrolled with both tribes as of January 23, 1993 shall be disenrolled from the Seminole Nation; provided that prior to disenrollment, such person shall be given notice of dual enrollment pursuant to the requirements of section 104(a) herein, including notice that he may avoid disenrollment by presenting proof to the Enrollment Office of relinquishment of membership in either tribe within thirty (30) days of the date of receipt of notice of disenrollment. In the event such person fails to present such proof on or before the expiration of the thirty day deadline, final notice of disenrollment containing a statement of the member's right to appeal the decision to the Seminole Nation Administrative Appeals Board shall be sent to the member pursuant to the requirements of section 113(c) herein. Any member of the Seminole Nation who becomes enrolled with another tribe on or after January 23, 1993 while maintaining his membership status with the Seminole Nation shall be disenrolled, regardless of whether he relinquishes membership in the other tribe.

(d) Band Membership. Each enrolled member by blood shall be entitled to membership in a Seminole Indian Band. Each Seminole Freedman enrolled member shall be entitled to membership in a Freedman Band. Members of the Seminole Nation of Oklahoma shall belong to their mother's band, provided that in the event a member's mother is not a member of the Seminole Nation, such member shall be entitled to membership in the band of such member's father, one must remain in his own band. No member shall be entitled to belong to more than one band at any one time.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-

04, January 23, 1993; amended by TO 93-16, April 3, 1993; amended by TO 93-22, November 6, 1993.]

### **Section 103. Relinquishment of Seminole Membership**

A tribal member may relinquish membership in the Seminole Nation only by submitting to the Enrollment Office a written, signed and notarized request that his name be removed from the membership roll, preferably on a relinquishment form provided by the Enrollment Office. The relinquishment of a member over the age of eighteen shall be an absolute and irrevocable relinquishment effective upon the date of receipt by the Enrollment Office. Relinquishment of the membership of a child under eighteen may be made only by a parent possessing legal custody of the child or by the legal guardian of the child and shall be a conditional relinquishment, conditioned on the member's acceptance for enrollment in another tribe, in which case the relinquishment shall be effective on the date of the enrollment in the other tribe.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993.]

### **Section 104. Enforcement of Dual Enrollment Prohibition**

(a) Notice of Disenrollment. The Enrollment Office Director shall have authority to disenroll a member found to be in violation of the dual enrollment prohibitions contained in section 102(c) herein. The Enrollment Office Director shall issue a notice of disenrollment due to a finding of dual enrollment only when the Enrollment Office obtains written documentation from another Indian tribe or tribes indicating that a member of the Seminole Nation or an applicant for membership in the Seminole Nation was or is enrolled in another Indian tribe in violation of section 102(c) and specifying the date of such enrollment. The written notice of disenrollment based on dual enrollment shall be sent to the member pursuant to section 113 herein. The notice shall state that the Enrollment Office Director has found the person in violation of the dual enrollment prohibition of section 102(c) herein, shall state the grounds for said finding and shall include as an attachment the documentation from the other Indian tribe or tribes supporting the finding of dual enrollment. The notice shall contain a statement of the member's right to appeal the decision to the Seminole Nation Administrative Appeals Board pursuant to the provisions of section 113 herein.

(b) Effective Date of Disenrollment. The disenrollment decision shall be effective upon the day following any appeal deadline, if the member fails to appeal a disenrollment decision at any stage of the proceedings by said appeal deadline. If the disenrolled member appeals the disenrollment decision within the time allowed, the disenrollment shall not become effective until a final appeal decision is rendered, provided that if the person who is the subject of a disenrollment action has an application for program benefits pending in the Judgment Fund Office of the Seminole Nation, final action on the application by the Judgment Fund Office shall be stayed pending a final decision from the Seminole Nation Administrative Appeals Board. When a disenrollment decision becomes final, the Enrollment office shall send the disenrolled person a certified letter, return receipt requested, stating that he or she is no longer a member of the Seminole Nation as of that date.

(c) Recordkeeping. The Enrollment Office shall permanently retain the complete file regarding each disenrollment action, including all notices, documentation and written decisions by tribal officials.

- (1) The Enrollment Office will make an abbreviated band membership list available upon request to the Band Chief from that band.
- (2) The Enrollment Office will make an abbreviated band membership list available upon request to the individual General Council Representatives from that band.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-22, November 6, 1993; amended by TO 2004-23, June 5, 2004.]

#### **Section 105. Enrollment Application Requirements**

Applications for enrollment must be submitted pursuant to the following requirements:

(a) Persons Whom May File Enrollment Applications. All persons not listed on the final rolls of the Seminole Nation of Oklahoma approved pursuant to section 2 of the Act of April 26, 1906 (34 Stat. 137), who claim descentance from a person listed on said rolls, shall be permitted to file an application with the Enrollment Office for processing for enrollment, provided that the following conditions are met:

- (1) Prior to issuance of an enrollment application form, the applicant must sign a notarized Request for Enrollment Form stating, under penalty of perjury, that he is not currently, nor has ever been, a member of another Indian tribe; and
- (2) Prior to issuance of an enrollment application form, the applicant must possess a Certificate of Degree of Indian Blood card and submit a copy of same with the Request for Enrollment Form.
- (3) A person denied the right to submit an application due to his failure or inability to comply with the above requirements shall be provided with a form containing a statement of his appeal rights pursuant to section 113 herein.

(b) Separate Applications; Signatures. A separate application must be filed by each person seeking enrollment. The application of an applicant eighteen years of age or older must be signed and notarized by the applicant or by the applicant's legal guardian. The application of an applicant less than eighteen years of age shall be submitted only by the applicant's parent possessing legal custody of the minor or by his legal guardian, and must be signed and notarized by the person submitting the application.

(c) **Information Required.** Each enrollment application must be complete in its entirety and must contain sufficient personal information to properly determine the applicant's eligibility for enrollment, including all names by which the applicant is known, the applicant's current mailing address, the name of the ancestor on the final roll and final roll number, and the name of the Indian tribe and degree of Indian blood of parents or other ancestors enrolled with other tribes. The Enrollment Office shall not be responsible for completion of the application. The responsibility for completion of the application is on the applicant.

(d) **Documentation Required.** Applications for enrollment must be supported by original state certified full photocopies, by state certified vault copies or, in the case of applicants born abroad, by federal archival copies of birth certificates and other official records showing date of birth and names of parents, and shall be subject to the following additional requirements if applicable:

- (1) **Name Discrepancies.** If the father or mother is known by another name, the applicant must bring in a document or documents showing both names, including the following: state birth certificates; Certificate of Degree of Indian Blood; court recorded probate or heirship papers; or an affidavit stating that the person was known by both names to the affiant, supported with some other record, such as a baptismal certificate showing the names of the parents and the birthdate.
- (2) **Children Born Out of Wedlock.** Applications based on paternal descentance from the 1906 rolls for a person born out of wedlock, whose birth certificate does not reflect his father's identity, must be supported by a notarized acknowledgement of paternity by the father or documented by a court order or other official finding as to the father's identity.
- (3) **Retention of Documents.** All evidence submitted to support an application for enrollment will be retained in the enrollment office as a part of the applicant's permanent record, except that original birth certificates will be copied and the original returned to the applicant.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-22, November 6, 1993.]

## **Section 106. Processing of Applications**

(a) **Review of Applications; Confidentiality.** Applications will be reviewed by the staff of the Enrollment Office. All application files shall be kept in the Enrollment Office and shall not be accessed by any person other than an Enrollment Office staff person.

(b) **Incomplete Applications.** If an application is incomplete, a copy of the application and documents attached thereto shall be placed in Enrollment Office pending files; and the original returned for completion, together with a statement from the Enrollment Office regarding additional information or documents required to complete the application. If the applicant fails to complete the application within thirty (30) days of the date of receipt of the

notice, the Enrollment Office shall remove the application from the pending file and place it in the closed application file; and shall notify the applicant that the application is closed effective as of the date of the notice and shall not be deemed to be a pending application for any purpose until such time as it is resubmitted with all required information and documentation.

(c) **Death of Applicant while Application Pending.** If the enrollment applicant dies during the pendency of his enrollment application in the Enrollment Office or during the pendency of an appeal to the Seminole Nation Administrative Appeals Board, the Board shall issue a decision regarding the enrollment applicant's eligibility for enrollment had he lived, if requested by the Judgment Fund Office of the Seminole Nation for purposes of determining eligibility for burial assistance. If a child is stillborn or if a child aged one year or less dies with or without an enrollment application pending, the Seminole Nation Administrative Appeals Board shall issue a decision regarding the child's eligibility for enrollment had he lived, if requested by the Judgment Fund Office of the Seminole Nation for purposes of determining eligibility for burial assistance. During the entire process, the Enrollment Office shall provide all notices to which the deceased would have been entitled to the applicant's family member responsible for the Judgment Fund Office application for burial assistance, and said family members shall assume the rights of the deceased at all further stages of the application process, including appeal rights.

(d) **Investigation of Potential Dual Enrollment.** If an application shows that a parent or other ancestor is or was a member of another Indian tribe, it shall be the duty of the Enrollment Office to check with the other tribe to determine whether the applicant was ever enrolled with that tribe.

(e) **Enrollment office Recommendations to Membership Committee.**

#### REPEALED

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-07, March 6, 1993; amended by TO 93-22, November 6, 1993.]

#### **Section 107. When and Where to File an application**

AMENDED AND RE-CODIFIED IN § 105

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended and re-codified by TO 93-04, January 23, 1993.]

#### **Section 108. What the Application Must Contain**

AMENDED AND RE-CODIFIED IN § 105.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended and re-codified by TO 93-04, January 23, 1993.]

**Section 109. Documentation**

AMENDED AND RE-CODIFIED IN § 105

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended and re-codified by TO 93-04, January 23, 1993.]

**Section 110. Review of Application**

AMENDED AND RE-CODIFIED IN § 106

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended and re-codified by TO 93-04, January 23, 1993.]

**Section 111. Tribal Membership Committee**

REPEALED

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993.]

**Section 112. Enrollment Decision**

(a) Issuance of Membership Card. The Enrollment Office shall approve or reject all completed applications for membership in a timely manner. A membership card shall be issued to each applicant found eligible for membership. The enrolled member's social security number, which shall be used as his identification number in the enrollment records, shall be placed on the membership card. The membership card shall be in the form of a photo identification card and shall contain the degree of Seminole Indian blood of the tribal member. It shall not contain the degree of Indian blood from any other tribe. The membership card shall be signed by the Principal Chief of the Seminole Nation or stamped with the signature of the Principal Chief. There will be no fee for the first card issued to a tribal member. A lost card may be replaced for a fee of \$5.00. All members shall have a duty to keep the Enrollment Office informed of their current mailing address.

(b) Blood Quantum and Band Affiliation Determination; Notice of Appeal Rights. When the applicant receives his membership card, he shall be given a written notice that if he disputes the accuracy of the Seminole Indian blood quantum or band affiliation contained on the membership card issued to him, he shall have the right to appeal the decision pursuant to section 113 herein. The notice of appeal rights shall include a summary of the appeals procedure.

(c) Denial of Membership; Notice of Appeal Rights. In the event that the enrollment office determines, after review of a complete application, that an applicant is not eligible for enrollment, it shall send a notice of denial of the application to those persons whose applications were rejected by the Enrollment Office. Each notice shall state the date of the action and shall state the grounds for the decision. The rejection notice shall also state that the applicant shall have the right to appeal the decision pursuant to section 113 herein. The rejection notice shall include a summary of the appeals procedure.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-07, March 6, 1993; amended by TO 93-22, November 6, 1993.]

**Section 113. Appeals of Disenrollment Decisions, Denials of Application for Membership or Determination of Seminole Blood Quantum**

(a) Appeals to Administrative Appeals Board. All appeals of actions by the Enrollment Office authorized in Title 22 herein shall be conducted by the Administrative Appeals Board of the Seminole Nation pursuant to Title 16, chapter seven of the Code of Laws of the Seminole Nation.

(b) Persons Having Appeal Rights. The following persons shall have the right to appeal a decision by the Enrollment Office:

- (1) A person who is not permitted to apply for enrollment due to his inability or refusal to sign an affidavit stating he has never been a member of another Indian tribe;
- (2) A person who has submitted an enrollment application and whose enrollment has been denied;
- (3) A person receiving a membership card who disputes the Seminole blood quantum determination or band affiliation contained on the card; or
- (4) A person served with a notice of disenrollment.

(c) Notice of Appeal Rights. All notices regarding appeal rights shall be mailed in a manner consistent with section 710 of Title 16 of the Code of Laws of the Seminole Nation, provided that if an appealable decision is personally served on the person affected, the notice of appeal rights shall be attached to the decision, in which case mailing of the notice shall not be required.

(d) Appeal to Administrative Appeals Board. A person entitled to appeal an Enrollment Office decision pursuant to section 113(b) above must file an appeal to the Administrative Appeals Board in the Enrollment Office no later than thirty (30) days from date of receipt of the notice of appeal rights. If the thirtieth day should fall on a holiday or on a weekend, the appeal must be received no later than the business day immediately following the holiday or weekend. The appeal shall be date-stamped at time of receipt by the Enrollment

Office, which shall provide a copy to the applicant. The appeal may be simply stated, but shall specify the particular ground(s) upon which it is based and the action or relief requested. It shall be signed by the person appealing. The Enrollment Office Director shall promptly notify a designated person in the Executive Office that an appeal has been filed, and the designated person shall be responsible for contacting the Appeals Board Chairman and securing a hearing date from him.

(e) Finality of Decision. If the applicant does not file a timely appeal, then he waives his right to a hearing before the Administrative Appeals Board, and the Enrollment Office decision will become final; provided that a person who has submitted an enrollment application and who has been denied enrollment on grounds other than dual enrollment may re-submit his enrollment application with additional documentation at a later date if he chooses not to appeal the prior decision denying his enrollment. If the applicant files an appeal, the decision made by the Administrative Appeals Board shall be final.

(f) Application Classified as Pending During Appeal. If the person affected by a decision denying enrollment appeals the Enrollment Office Director's decision within the time allowed, his membership application shall be considered pending until a final appeal decision is rendered; provided that if the person affected also has an application for Judgment Fund Program benefits pending, final action on the Judgment Fund Program benefits application shall be stayed pending a final enrollment decision.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-22, November 6, 1993.]

[NOTE: TO 93-22 BECAME EFFECTIVE ON NOVEMBER 6, 1993 WITH THE FOLLOWING PROVISOS: (i) THAT IT WOULD NOT AFFECT THE FINALITY OF ANY DECISION WHICH BECAME A FINAL DECISION PURSUANT TO LAW IN EFFECT PRIOR TO ITS PASSAGE; (2) THAT ANY PERSON WHO RECEIVED AN APPEALABLE DECISION PRIOR TO DATE OF ITS PASSAGE IS ENTITLED TO A NEW NOTICE OF APPEAL RIGHTS PROVIDING SUCH PERSON WITH THIRTY DAYS FROM DATE OF RECEIPT OF THE NOTICE TO APPEAL THE DECISION; AND (3) THAT THE ADMINISTRATIVE APPEALS BOARD WILL HEAR THE APPEAL OF ANY PERSON WHO HAS AN APPEAL PENDING BEFORE THE JUDGMENT FUND APPEALS BOARD OR THE MEMBERSHIP APPEALS BOARD AS OF NOVEMBER 6, 1993.]

#### **Section 114. REPEALED**

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03, April 13, 1991; codified by TO 91-12, November 16, 1991; repealed by TO 91-14, November 16, 1991; repealed by TO 93-04, January 23, 1993.]

#### **Section 115. AMENDED AND RE-CODIFIED**

AMENDED AND RE-CODIFIED IN § 117



[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended and re-codified by TO 93-04, January 23, 1993.]

**Section 116. AMENDED AND RE-CODIFIED**

AMENDED AND RE-CODIFIED IN § 112

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended and re-codified by TO 93-04, January 23, 1993.]

**Section 117. Membership Rolls**

(a) Maintenance of Membership Rolls. The Enrollment Office shall maintain an up-to-date computerized full membership roll of all tribal members by blood and of all freedmen tribal members. The information on said rolls shall be limited to the following: name of the member, including all names formerly used by the member, with the exception of original surnames of adopted persons; the member's sex; the member's degree of Seminole Indian blood; the member's band; the date of enrollment; the birthdate of the member; the address of the member; and the social security number or other enrollment identification number of the member. The Enrollment Office shall also maintain an abbreviated membership roll which contains only the following information: the name of member, the member's degree of Seminole Indian blood, birthdate and the member's band.

(b) Maintenance of Membership History. Whenever a member of the Seminole Nation is disenrolled, relinquishes membership, or dies, the name of such person shall be removed from the current membership roll and placed on a list of former tribal members, provided that such list shall state the reason for removal from the membership roll and the date of the event causing said removal. Documentary evidence of the cause of removal from the membership rolls shall be maintained in the person's file, such as a final disenrollment decision, an executed relinquishment form, or a copy of an official death certificate, probate order, notarized statement from a funeral director who handled the funeral, notarized statement of the physician attending the deceased, or notarized statement of a relative or friend who has personal knowledge of the date of death.

(c) Access to Membership Rolls. The printout of the abbreviated membership rolls shall be available to public inspection during regular office hours of the Enrollment Office, and shall be available for computer access by the Seminole Nation Election Board Office. Both the computer printout of the full membership roll and the computerized full membership roll shall be available for viewing and computer access by tribal programs providing benefits to tribal members. The Enrollment Office shall provide information about a specific tribal member contained on the membership rolls to any enrollment office of another Indian tribe which requests in writing information about such person for enrollment purposes.

[HISTORY: Enacted by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16, 1991; amended by TO 93-04, January 23, 1993; amended by TO 93-07, March 6, 1993.]

**Section 117-A. Automatic Correction of Certain Blood Quantum Errors by Enrollment office**

Degree of Seminole Indian blood may be amended without going through the appeal process set forth in section 113 herein only on those membership cards issued prior to January 23, 1993. A determination of Seminole Indian blood quantum shall not be amended unless said determination sets forth a Seminole Indian blood quantum which is less than that to which the member is entitled. The blood quantum amendment may occur in either one of the following ways:

(a) Automatic Correction of Error by Enrollment office. When Enrollment Office personnel discover an error in blood degree on a membership card issued prior to January 23, 1993 which sets forth a Seminole Indian blood quantum which is less than that to which the member is entitled, he shall prepare a memorandum for the file stating the reason why the determination was erroneous, and shall attach any applicable supporting documentation to the memorandum. He shall submit a request for correction of blood quantum to the Enrollment Office Director. Upon approval of the Enrollment Office Director, a new membership card containing the corrected blood quantum shall be issued to the tribal member, and the tribal roll shall be corrected to reflect the amended blood quantum. When feasible, Enrollment Office personnel shall check the files of known living lineal ancestors or descendants of the member whose membership card was amended to determine if their membership cards contain the same error, and shall follow the amendment procedure set forth herein if an error is discovered.

(b) Request for Correction of Error by Member. When a member of the Seminole Nation who received a membership card prior to January 23, 1993 discovers an error regarding his band affiliation or an error in blood degree on his membership card, which constitutes recognition of a Seminole Indian blood quantum which is less than that to which the member is entitled, he may submit a written request for correction of the error to the Enrollment Office, stating the reason why the determination was erroneous, and shall attach any applicable supporting documentation to the request. The Enrollment Office shall make a timely decision following its receipt of the request. If the Enrollment Office denies the request for correction, it shall include with its decision a notice of appeal rights pursuant to section 113 herein.

[HISTORY: Enacted by TO 93-04, January 23, 1993; amended by TO 93-22, November 6, 1993.]

**Section 118. Amendments and Repeals: Effective Dates**

All enrollment laws of the Seminole Nation in effect as of April 13, 1991 are repealed. All other provisions of Title 22 herein which were repealed or amended subsequent to April 13, 1991 shall be deemed repealed or amended as of date of enactment of the repeal or amendment.

[HISTORY: Enacted by TO 93-04, January 23, 1993.]

[NOTE: ENTIRE PAST HISTORY: Enacted by TO 77-4, August 20, 1977; amended by TO 78-1, June 3, 1978; amended by TO 78-2, June 3, 1978; amended by TO 79-2, February 23, 1979; amended by TO 90-8, December 1, 1990; amended by TO 91-03A, April 13, 1991; codified by TO 91-12, November 16,

1991; amended by TO 93-04, January 23, 1993; amended by TO 93-07, March 6, 1993; amended by TO 93-22, November 6, 1993.]

**TITLE 23**  
**OPEN MEETINGS**  
**RESERVED**

**TITLE 24**  
**LAW ENFORCEMENT DIVISION**  
**INDEX**

<b>TITLE 24 LAW ENFORCEMENT DIVISION INDEX .....</b>	<b>i</b>
<b>TITLE 24 LAW ENFORCEMENT DIVISION.....</b>	<b>1</b>
<b>CHAPTER ONE.....</b>	<b>1</b>
Section 101. Establishment of a Tribal Police Force.....	1
Section 102. Jurisdiction.....	1
Section 103. Composition.....	1
Section 104. Authority of Commissioned Personnel.....	1
Section 105. Authority of Chief of Police .....	2
Section 106. Commission Cards and Identification Cards .....	2
Section 107. Demotion or Termination Based on Qualifications .....	3
Section 108. Chain of Command .....	3
Section 109. Code of Conduct .....	3
Section 110. Oath of Office .....	3
Section 111. Authority to Make Regulations.....	3
Section 112. Cross-Deputation.....	3
Section 113. Support Enforcement Division (Reserve Officer Program) .....	5
Section 114. Auxiliary Programs .....	5
Section 115. Volunteers.....	5
Section 116. Review Board.....	6
Section 117. Mutual Aid Agreements .....	6
<b>CHAPTER TWO REQUIRED TRAINING AND EQUIPMENT .....</b>	<b>8</b>
Section 201. Required Police Training.....	8
Section 202. Provision of Uniforms .....	9
Section 203. Firearms Training.....	9
Section 204. Firearms and Ammunition.....	9
Section 205. Use of Firearms .....	11
Section 206. Report of Firearm Use .....	11
Section 207. Non-Firearm Weapons .....	12
<b>CHAPTER THREE DISCIPLINARY ACTIONS.....</b>	<b>14</b>
Section 301. Disciplinary or other Adverse Police Chief Actions .....	14
<b>CHAPTER FOUR DETENTION.....</b>	<b>15</b>

Section 401. Jails .....	15
<b>CHAPTER FIVE TRIBAL PEACE OFFICER CERTIFICATION AND TRAINING...</b>	<b>16</b>
Section 501. Certification Academy.....	16
Section 502. Curriculum and Courses of Study .....	16
Section 503. Basic Academy Rules and Regulations .....	17
Section 504. Academic Requirements.....	17
Section 505. Requirements for Instructors .....	17
Section 506. Certification by Reciprocity.....	18
<b>CHAPTER SIX MISCELLANEOUS PROVISIONS.....</b>	<b>19</b>
Section 601. Return of Equipment .....	19
Section 602. Delegation and Assignment of Duties .....	19
Section 603. Immunities .....	19
Section 604. Bonding .....	19
Section 605. 638 Contract Police Officers.....	19
<b>CHAPTER SEVEN ALCOHOL CONTROL AND ENFORCEMENT.....</b>	<b>20</b>
Section 701. Title .....	20
Section 702. Authority.....	20
Section 703. Purpose .....	20
Section 704. Application of Federal Law .....	20
Section 705. Administration of Ordinance .....	20
Section 706. Sovereign Immunity Preserved.....	21
Section 707. Applicability .....	21
Section 708. Computation of Time .....	21
Section 709. Liberal Construction.....	21
Section 710. Collection of Applicable Fees and Fines .....	22
Section 711. Matter of Special Interest .....	22
Section 712. Federal Law .....	22
Section 713. Need for Regulation .....	22
Section 714. Geographic Locations.....	23
Section 715. Definitions .....	23
Section 716. Prohibition of the Unlicensed Sale of Alcoholic Beverages.....	25
Section 717. License Required.....	25
Section 718. Sales for Cash .....	25
Section 719. Personal Consumption.....	26

Section 720.	Tribal Enterprises .....	26
Section 721.	Licensing Eligibility .....	26
Section 722.	Licensing Application Process.....	26
Section 723.	Term and Renewal of Licenses .....	27
Section 724.	Classes of Licenses.....	27
Section 725.	Application Form and Content.....	28
Section 726.	Public Hearing.....	28
Section 727.	Action on the Application.....	29
Section 728.	Denial of License or Renewal .....	29
Section 729.	Temporary Denial of License .....	30
Section 730.	Cure .....	30
Section 731.	Investigation.....	30
Section 732.	Procedures for Appealing a Denial or Condition of Application.....	31
Section 733.	Revocation of License .....	31
Section 734.	Initiation of Revocation Proceedings .....	31
Section 735.	Revocation Hearing .....	32
Section 736.	Delivery of License .....	32
Section 737.	Transferability of Licenses .....	32
Section 738.	Posting of License .....	33
Section 739.	Appointment of Alcohol Regulatory Authority Subordinate Committee.....	33
Section 740.	Alcohol Regulatory Authority .....	33
Section 741.	Right of Inspection.....	34
Section 742.	Limitation on Powers .....	34
Section 743.	Annual Fee Schedule.....	34
Section 744.	Renewal Fees and Late Charge Fine .....	35
Section 745.	Manufacture, Sale, or Distribution Without License .....	35
Section 746.	Unlawful Purchase .....	35
Section 747.	Intent to Sell.....	35
Section 748.	Sale to Intoxicated Person .....	35
Section 749.	Public Conveyance.....	36
Section 750.	Age of Consumption .....	36
Section 751.	Serving Underage Person .....	36
Section 752.	False Identification.....	36
Section 753.	Documentation of Age .....	36

Section 754.	General Penalties.....	37
Section 755.	Initiation of Action .....	37
Section 756.	Contraband; Seizure; Forfeiture.....	38
Section 757.	Nuisance .....	38
Section 758.	Action to Abate Nuisance .....	39
Section 759.	Use and Appropriation of Revenue Received.....	39
Section 760.	Audit .....	39
Section 761.	Reports.....	39
Section 762.	Severability .....	40
Section 763.	Construction.....	40
Section 764.	Effective Date .....	40
Section 765.	Prior Law Repealed .....	40
Section 766.	Amendment.....	40



**TITLE 24**  
**LAW ENFORCEMENT DIVISION**  
**CHAPTER ONE**

**Section 101. Establishment of a Tribal Police Force**

There is hereby established a Tribal Law Enforcement Department within the Tribal Administration to be known as the Seminole Nation of Oklahoma Lighthouse Police Department. It shall be the duty of all employees assigned to the Seminole Nation of Oklahoma Lighthouse Police Department to serve the public by enforcement of the Tribal laws and other applicable laws in addition to rendering such assistance relative to law enforcement as may be necessary and to protect all persons and property within the Tribal jurisdiction from criminal activities.

**Section 102. Jurisdiction**

The jurisdiction of the Seminole Nation of Oklahoma Lighthouse Police Department will extend to the enforcement of all laws enacted by the Tribal Council of the Seminole Nation of Oklahoma and protection of all persons and property located within the boundaries of property owned by the Seminole Nation of Oklahoma which is held in trust by the United States.

**Section 103. Composition**

The Seminole Nation of Oklahoma Lighthouse Police shall be composed of officers qualified to serve under the Code of Federal Regulations and Chapter 2 of this Code. The officers shall be designated by title according to rank based upon length of service, experience and training. It shall be the duty of the Police Chief to review job descriptions on an annual basis and to update as necessary to ensure proper delivery of services. The position titles shall include, but is not limit to:

- (a) Police Chief. Supervise all activities and manages the Law Enforcement Program
- (b) Assistant Chief of Police. Supervise Police Officers and their duties.
- (c) Police Officer I. Patrols and investigates actions. May supervise.
- (d) Police Officer II. Patrols and investigates.
- (e) Police Officer III. Patrols
- (f) Police Officer IV. Administrative Assistant.
- (g) Criminal Investigator. Investigates criminal reports/activities.

**Section 104. Authority of Commissioned Personnel**

All sworn personnel of the Lighthouse Police Department are authorized to:

- (a) Carry firearms.
- (b) Execute or serve warrants, summonses or other orders relative to a crime committed in their jurisdiction.
- (c) Make an arrest without a warrant for an offense committed within their jurisdiction if:
  - (1) The offense is committed in the presence of the officer, or
  - (2) The offense is a felony and the officer has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony.
- (d) Offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian Country or in the arrest of an offender against the United States.
- (e) Make inquiries of any person, and administer to, or take from any person, an oath, affirmation or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian Country of a law of either the United States, an Indian Tribe, or State and/or its political subdivisions, that has authorized the officer to enforce or carry out their Tribal laws.
- (f) Wear a prescribed uniform and badge or carry prescribed credentials.
- (g) Perform any other law enforcement related duty.
- (h) When requested, assist (with or without reimbursement) any Federal, Tribal, State or local law enforcement agency in the enforcement or carry out of the laws or regulations the agency enforces or administers.

#### **Section 105. Authority of Chief of Police**

The Chief of the Lighthorse Police Department has the ultimate responsibility for managing and operating the law enforcement program on a day-to-day basis.

#### **Section 106. Commission Cards and Identification Cards**

- (a) Each Law Enforcement Division, Support Enforcement Division Officer and Chief of Police shall, upon taking their oath of office and thereafter as an individual's rank changes, or at intervals decided by Police Regulation, be issued a commission card containing, at a minimum, the officer's photograph, name rank, badge number, the fact that the officer is authorized to carry firearms and make arrests, the fact that such person is a commissioned law enforcement officer of the Seminole Nation of Oklahoma Lighthorse Police Department and the signatures of the Principal Chief and the Chief of the Lighthorse Police Department.
- (b) Every member of the Seminole Nation of Oklahoma Lighthorse Police Department shall carry their commission (or other identification in the case of non-commissioned employees) with them at all times when on active duty, and shall, as soon as

reasonably practicable under the circumstances, exhibit such commission or identification and give their name, rank and badge number upon request of any person.

**Section 107. Demotion or Termination Based on Qualifications**

Any Police Officer who has not successfully completed the training requirements set forth in this Code within the allotted time, shall be terminated, provided that funds were available for the required training.

**Section 108. Chain of Command**

All Police Officers shall report directly to the Police Chief who shall have the authority to employ, supervise, discipline, or terminate the Officers of the Seminole Nation Lighthorse Police Department. The Police Chief shall be subject to the authority of the Principal Chief of the Seminole Nation of Oklahoma. To ensure stability in services, the Police Chief cannot be removed from office or demoted as the result of a change of the Principal Chief. It shall be the duty of the Police Chief to ensure only lawful orders are followed.

**Section 109. Code of Conduct**

The Seminole Nation of Oklahoma Lighthorse Police Department shall function pursuant to a Code of Conduct which shall prescribe specific rules concerning conflicts of interest, employee conduct both on and off duty, impartiality and thoroughness in performance of duty and acceptance of gifts or favors. The code shall ensure that certain standards of conduct are included which will require each law enforcement officer to be capable of performing that officer's duties to the greatest extent possible.

**Section 110. Oath of Office**

All personnel, prior to assuming sworn status, take and subsequently abide by an oath of office to enforce the law, uphold the U.S. Constitution and the Seminole Nation of Oklahoma Constitution.

**Section 111. Authority to Make Regulations**

The Chief of the Lighthorse Police Department is hereby authorized and empowered to make any useful or necessary rule or regulation, not inconsistent with any other provision of Tribal Law or the Indian Civil Rights Act, to promote the efficient, safe and honest conduct of the activities of the Department. Every such rule or regulation shall be filed for record in the office of the Tribal Secretary prior to becoming effective and shall be maintained in the form of a Law Enforcement Handbook. A copy of every such rule and regulation shall be delivered to the Principal Chief at or prior to the time of filing. The Principal Chief may vacate or modify any such rule in writing. Objections may be appealed to the Review Board and subsequently, to the Court.

**Section 112. Cross-Deputation**

(a) Any person regularly employed as a law enforcement officer by the Federal Government, the State of Oklahoma or any of its political subdivisions, or any Indian Tribe who

would meet the minimum qualifications for entry as an officer in the Lighthorse Police Department may receive a Special Tribal Police Officer Commission upon the recommendation of the Chief of the Lighthorse Police and Principal Chief. Such special commission shall entitle the bearer thereof to exercise the powers and duties of a member of the Lighthorse Police Department when their assistance is requested within the Tribal jurisdiction by any Tribal officer. Such officers shall be under the supervision of regular members of the Lighthorse Police Department while actively involved in providing assistance within the Tribal jurisdiction and shall be entitled to all the authority and immunities of a member of the Lighthorse Police Department in such situations.

(b) Commissions are to be issued only when a legitimate law enforcement need requires issuance. Commissions are not to be issued solely for the furtherance of inter-agency or public relations.

(c) All recipients of Special Law Enforcement Commissions must meet the following standards:

- (1) Be at least 21 years old.
- (2) Meet respective state Peace Officer Standards and Training requirements for certification as a bona fide full-time peace officer and have written proof of such certification. Federal law enforcement applicants must produce evidence of federal law enforcement officer certification.
- (3) Within the period immediately preceding the issuance of the commission, must have passed their department's firearms qualifications and continue to be certified semi-annually.
- (4) Have not ever have been convicted of a felony, nor within the one year period immediately preceding the issuance of the commission, has not been convicted of a misdemeanor offense, with the exception of minor traffic offenses, nor been convicted of misdemeanor domestic violence preventing him or her from possessing a firearm in compliance with Section 658 of Public Law 104-208 (the 1996 amendment to the Gun Control Act of 1968), and has not been the subject of a court order prohibiting him from possessing a firearm.
- (5) Have no physical impairments that will hinder his/her performance as an active law enforcement officer.
- (6) Tribal and contract officers shall meet the minimum standards established for BIA officers.

(d) Officers of the Enforcement Division and Support Division of the Lighthorse Police Department may accept, with the approval of the Chief of the Lighthorse Police, similar special or deputy commissions from other Indian Tribes in Oklahoma, the State of Oklahoma and any of its political subdivisions and the Federal Government for which they are qualified.

(e) All Enforcement Division Officers are encouraged to qualify for and receive a Special Law Enforcement Commission from the Bureau of Indian Affairs.

(f) The Chief of the Lighthorse Police and the Principal Chief may enter into necessary agreements with other Indian tribes, States and any of their political subdivisions or the Federal Government to facilitate cross-deputations.

### **Section 113. Support Enforcement Division (Reserve Officer Program)**

The Chief of the Lighthorse Police Department may include a Reserve Officer Program to enhance the delivery of services provided that:

(a) The selection criteria for reserves are the same as that for full-time officers.

(b) All sworn reserve officers must complete a recruit academy training program comparable to that completed by full-time officers, prior to any routine assignment in any capacity in which the reserve officer is allowed to carry a weapon or is in position to make an arrest, except as part of a formal field training program.

(c) Uniforms and equipment for reserve officers are the same as those for full-time officers performing like functions.

(d) Reserve officers receive in-service training equivalent to that required for full-time officers performing like functions.

(e) Reserve officers are trained in use-of-force policy(s) and tested for firearms proficiency with the same frequency as full-time officers.

(f) Reserve officers are bonded and/or provided with public liability protection equal to that provided to full-time officers.

### **Section 114. Auxiliary Programs**

The Lighthorse Police Department may include an Auxiliary Program. The Chief of the Lighthorse Police Department shall ensure that:

(a) Auxiliaries are not commissioned with sworn officer status.

(b) The duties which auxiliaries may perform are identified.

(c) Auxiliaries receive training in those duties identified.

(d) If auxiliaries wear uniforms, the uniforms clearly distinguish them from sworn officers.

### **Section 115. Volunteers**

The Chief of the Lighthorse Police Department has the authority to utilize volunteers to provide services. The volunteers shall serve without monetary compensation for their services rendered.

The Chief of the Lighthorse Police Department shall develop a written plan for volunteer services that specifies:

- (a) The lines of authority.
- (b) Responsibility and accountability of volunteers.
- (c) Procedures for screening and selection of volunteers who provide services to the program on a regular basis.
- (d) The provision of training to volunteers, appropriate to the nature of their services.
- (e) That volunteers agree to abide by all program rules, policies, procedures and practices.
- (f) That the Chief of the Lighthorse Police Department may discontinue a volunteer activity at any time by written notice.

#### **Section 116. Review Board**

The Review Board shall be composed of the Assistant Principal Chief, the Chief of the Lighthorse Police Department and one Officer selected from within the Law Enforcement Division by the Principal Chief. The Review Board shall have the authority to hear complaints arising from discipline or termination and to investigate and rule on police actions.

#### **Section 117. Mutual Aid Agreements**

The Chief of the Lighthorse Police Department, with the approval of the Principal Chief, shall have the authority to enter into written agreements with neighboring law enforcement agencies to provide mutual aid in emergency situations. The mutual aid agreement must include, at a minimum the following details:

- (a) The legal status of law enforcement agencies and their personnel responding to mutual aid requests.
- (b) Procedures for vesting responding personnel with the legal authority to act within the agency's jurisdiction.
- (c) Procedures for requesting mutual aid.
- (d) Identity of those persons authorized to request mutual aid.
- (e) Identity of those persons to whom outside personnel are to report.
- (f) Procedures for maintaining radio communication with outside personnel.
- (g) Expenditures, if any, which should be borne by the law enforcement program to compensate for the use of the responding agency's resources.

- (h) Procedures for review and revision if prescribed in the agreement.

## **CHAPTER TWO**

### **REQUIRED TRAINING AND EQUIPMENT**

#### **Section 201. Required Police Training**

(a) It shall be the duty of the Chief of the Lighthorse Police Department to maintain from time to time as circumstances require and permit classes of instruction for the members of the Law Enforcement Division. Such classes shall familiarize the policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and police activities, and with court orders and legal forms and the duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation with the citizens of the Tribe, other residents of the tribal jurisdiction and surrounding communities in establishing better social and governmental relations.

(b) Newly employed Police Officers of the rank of Police Officer I, Police Officer II, Police Officer III, or Police Officer IV shall successfully complete, prior to or within their first year of service in that rank, the approved Basic Training Police Training Course conducted at the Indian Police Academy or the Tribal Basic Peace Officer Certification or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy. An officer who fails to complete the training required by this paragraph, except for lack of Tribal funds to pay such training or the unavailability of such training, shall be discharged or transferred to a position in the Administrative Division. Transfer may result in demotion.

(c) Newly employed Police Officers of the rank of Assistant Chief of Police shall successfully complete, prior to or within their first year of service in that rank, the approved Supervisory Enforcement Officer Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Bureau of Indian Affairs. An officer appointed to such rank who fails to complete the training required by this paragraph, except for the lack of Tribal funds to pay for such training or the unavailability of such training, shall be discharged or transferred to a non-supervisory position. Transfer may result in demotion.

(d) Newly employed Police Officers of the rank of Chief of Police shall successfully complete, prior to or within their first year of service in that rank, the approved Executive Management Course of Training conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Bureau of Indian Affairs. An officer appointed to such rank who fails to complete the training required by this paragraph, except for the lack of Tribal funds to pay for such training or the unavailability of such training, shall be discharged or transferred to a non-supervisory position. Transfer may result in demotion.

(e) The provisions of this Section shall not apply to the personnel in the Administrative Division, the Support Division or special officers except as otherwise provided in the Title or by regulation or the Lighthorse Police Department. Unless otherwise prohibited by Lighthorse Police Departmental regulation or federal funding requirements, completion of equivalent tribal, state or federal training programs shall, upon approval by the Chief of



Lighthorse Police and the Chief of the Seminole Nation constitute compliance with this section.

## **Section 202. Provision of Uniforms**

The Lighthorse Police Department shall provide for the clothing and equipment, including firearms, used by employees in performing law enforcement functions. The Chief of Police shall develop procedures for the provision of clothing, equipment and firearms. At a minimum, the uniforms, when worn, shall positively identify the wearer as a law enforcement officer. The badge, nameplate and tribal identification patch shall be visible at all times. Uniforms of each Division of the Lighthorse Police Department shall be plainly and easily distinguishable, even at a distance.

## **Section 203. Firearms Training**

The firearms training for authorized personnel shall include, at a minimum, courses of fire approved by N.R.A., C.L.E.E.T. or the Federal Law Enforcement Training Academy and shall be conducted at least twice each twelve months. Records of training shall be maintained in the individuals personnel file.

## **Section 204. Firearms and Ammunition**

The guidelines for the type of firearms and ammunition authorized to be carried and used are as follows:

### **(a) Handguns and Ammunition**

- (1)** Only handguns of authorized calibers and manufacture are permitted as a primary weapon. The following calibers and manufactures are authorized for duty use:
  - (A)** .38+p
  - (B)** 9mm Parabellum
  - (C)** .45 ACP
  - (D)** .40 cal.
  - (E)** Other calibers approved in writing by the Chief of the Lighthorse Police Department.
  - (F)** Approved brands are: Smith & Wesson, Glock, Beretta, Sig Sauer, Colt, Ruger, Charter Arms, Walther & Heckler & Koch.
- (2)** Handguns must function in a double action mode for the first round.
- (3)** Handguns must have a minimum five round capacity.

- (4) The handgun must be registered with the program. The handgun must be examined by a programs firearms armorer or firearms instructor and found to be safe and reliable. The handgun registration record is kept with the officer's personnel file.
  - (5) The program will furnish or authorize ammunition for program sponsored training and duty use for all authorized handguns. Only program furnished or authorized ammunition will be carried.
    - (A) The projectile (bullet) must weigh at least 75 grains,
    - (B) Have a minimum advertised muzzle velocity of 750 feet per second,
    - (C) Be of a hollow point design, and
    - (D) Be factory loaded and supplied by a manufacturer with a reputation of proven reliability.
  - (6) Armor piercing and other loads deviating from the above standards are not to be utilized except in extraordinary circumstances as authorized by a supervisor.
- (b) Shotguns and Ammunition
- (1) Shotguns authorized for use by officers must meet the following criteria:
    - (A) 12 gauge with no less than 18-inch barrel
    - (B) Have at least a 5-shell capacity with repeating capability
    - (C) Capable of being combat loaded
  - (2) Shotgun ammunition meets the following criteria:
    - (A) Buckshot and rifled slugs are authorized for normal duty purposes.
    - (B) Shotgun ammunition must be factory loads with proved reliability.
    - (C) Specialty ammunition, i.e., bean bag rounds, rubber bullet, sabot rounds or gas rounds may be carried by officers trained in their use and upon authorization of the Chief of the Lighthorse Police Department.
- (c) Rifles and Ammunition
- (1) Any officer wishing to carry a rifle must have the express written approval of the Chief of the Lighthorse Police Department.

- (2) Rifles authorized for duty use must meet the following criteria:
  - (A) The rifle shall have a barrel of 16 or more inches in length
  - (B) Only rifles firing 9MM, 45, .223, .308, or 30-06 calibers shall be authorized
- (3) Rifle ammunition must meet the following criteria:
  - (A) High velocity, soft nose or hollow point
  - (B) The ammunition must be factory loads with proven reliability
  - (C) Specialty ammunition, i.e., rubber bullet, sabot rounds or gas rounds may be carried by officers trained in their use and upon authorization of the Chief of the Lighthouse Police Department.

#### **Section 205. Use of Firearms**

(a) A firearm may be discharged in the line of duty only when in the considered judgment of the officer there is imminent danger of loss of life or serious bodily injury to the officer or to another person, or when the officer is attempting to apprehend a fleeing person who has committed a felony or an offense which resulted in the death or serious bodily injury of another person in the presence of the officer and of other reasonable means will prevent escape, or when the person is an escaped felon convicted of an offense which involved the death or serious bodily injury of another and no other reasonable means will prevent escape.

(b) The weapon may be fired only for the purpose of rendering the person at whom it is fired incapable of continuing the activity prompting the officer to shoot. The firing of warning shots is prohibited. This policy does not apply to the use of firearms to participate in official marksmanship training, the private use of firearms in target practice at the police range or other target range while off duty, the private use of firearms while hunting while off duty, or the use of firearms, whether on or off duty to kill a dangerous or seriously injured animal. Nor does this policy apply to the use of tranquilizer guns for the purpose of capturing stray, disturbed or ill animals, both domestic and wild. Police officers may also use small caliber or small-bore firearms for the purpose of animal control, including the killing of snakes and other varmints.

(c) In other situations, a police officer may use any reasonable force, but not including deadly force, necessary to prevent or halt unlawful activity conducted in the presence of the officer or to apprehend or recapture a person subject to arrest.

#### **Section 206. Report of Firearm Use**

Except in firearms training, each time a firearm is used for law enforcement purposes a report shall be filed with the superior of the officer who used the weapon and forwarded through the chain of command to the Principal Chief. Whenever the use of a weapon results in serious injury or death of any person, the officer firing the weapon shall be placed on administrative leave or other strictly administrative duties pending a thorough investigation of all circumstances

surrounding the incident. The investigation shall be conducted by the Review Board who shall hold a public hearing upon notice to determine the facts of the case and whether under the circumstances the use of the firearm was justifiable. If the Review Board determines that the use of the firearm was justified, the officer shall be returned to active duty at the officer's prior assignment. If the Review Board determines that the use of the firearm was not justified, the officer will be subject to such disciplinary action, including a referral to the appropriate Prosecutor for prosecution as may be appropriate. The Police Officer shall have the right to appeal an adverse decision of the Review Board to the appropriate Court.

#### **Section 207. Non-Firearm Weapons**

The guidelines for the type of the non-firearm weapons authorized to be carried and used are as follows:

(a) Chemical Aerosol Sprays. Chemical sprays should be used only when, in the opinion of the person using them, it is necessary to gain control of an individual or group of individuals or to ensure the protection of the public or officers or to apprehend dangerous violators of the law or persons who present a danger to themselves or others. Care shall be taken to afford first aid to any person upon whom chemical sprays have been used. Circumstances surrounding the use of a chemical spray shall be reported to the officer's supervisor as soon as possible. Chemical agents should be replaced as recommended by the manufacturer. Disposal of the chemical agents shall be in accordance with prescribed environmental procedures.

(1) Approved types are:

- (A) Oleoresin Capsicum (commonly referred to as Pepper Spray)
- (B) C.N. (commonly referred to as Tear Gas)
- (C) C.S. (commonly referred to as Tear Gas)

(b) Impact Weapons. All batons must be at least 21 inches in length and not more than 36 inches in length. The use of impact weapons must be governed by sound judgment. The baton is for the protection of the officer and the public and it functions primarily as a defensive instrument. In the protection of life and property and in the defense of an officer's person, the baton has its specific place.

(1) The baton may be used in the following circumstances:

- (A) Protection of life and property
- (B) Defense of the officer's person
- (C) Where hands/body alone would prove injurious to the officer. The baton strike zones should be targets of priority which are designed to be the arms, elbows, wrists, hands and legs. Strikes above the shoulder, to the chest or groin are restricted for the survival of the officer only.

(2) Approved types are:

(A) The friction/expandable baton

(B) The straight baton

(C) The side-handled baton

(c) Personal Weapons. This involves the use of what is commonly known as fist, hand, elbow, foot, knee, and etc. The use of personal weapons can be by officers to defend themselves against assault, or as a method of using physical force to gain control of a situation when other levels of force are inappropriate or ineffective.

(d) Electronic Restraint Devices. Devices designed to immobilize violent individuals with a short burst of electronic current are authorized for use where conventional restraint tactics are reasonably judged likely to fail or where it would be unsafe to approach the individual. The Chief of Police shall approve individual devices based on their proven record of safety and reliability.

## **CHAPTER THREE**

### **DISCIPLINARY ACTIONS**

#### **Section 301. Disciplinary or other Adverse Police Chief Actions**

Prior to taking an adverse disciplinary action against a Police Chief authorized by this Title or Police Regulation to discipline law enforcement officers, the following steps shall be taken:

- (a) Notifying the Police Chief of the contemplated action and give a full specification of the reasons such action is contemplated.
- (b) Provide the Police Chief with a written statement of any specific violation of the rules, regulations, or statutes the disciplining authority alleges the Police Chief has committed and the names of all persons upon whose testimony these allegations are based.
- (c) Set a hearing date not less than fifteen days after the Police Chief has been given the written statement of allegation.
- (d) Provide the Police Chief and the Police Chief's counsel at the hearing with an opportunity to confront and cross-examine each adverse witness.
- (e) Provide the Police Chief and the Police Chief's counsel at the hearing with an opportunity to delineate issues, to present factual contentions in an orderly manner and to generally protect the Police Chief's interest.
- (f) Reconsider the decision to take the adverse action based solely on the evidence given at the hearing and provide the Police Chief at the time the decision is announced with a written statement of the reasons for the decision and the evidence relied upon in reaching the decision.
- (g) Issue a final order based on the decision reached after the hearing.

## **CHAPTER FOUR**

### **DETENTION**

#### **Section 401. Jails**

(a) Until such time the Seminole Nation of Oklahoma Lighthorse Police Department shall maintain adequate detention facilities, prisoners shall be housed at the appropriate sheriff's office. A daily per diem rate shall be negotiated between the Seminole Nation of Oklahoma Lighthorse Police Department and the sheriff's office and set out by contract to cover this expense when necessary.

(b) Should the Seminole Nation of Oklahoma Lighthorse Police Department develop and implement a jail facility, the jail facility and its operations shall become a division under the Lighthorse Police Department. The Chief of the Lighthorse Police shall develop and implement the necessary policies and contracts for the operation of the facility.

## **CHAPTER FIVE**

### **TRIBAL PEACE OFFICER CERTIFICATION AND TRAINING**

#### **Section 501. Certification Academy**

The Lighthorse Police shall be vested with the authority to conduct basic peace officer certification academies for the purpose of training officers holding a regular commission, reserve commission or special officer commission in basic peace officer academics. The Academies shall be coordinated by the Chief of Police and conducted on an as-needed basis.

#### **Section 502. Curriculum and Courses of Study**

(a) The Chief of Police shall formulate and promulgate a program of instruction for peace officer certification, comprised of fundamental law enforcement skills and knowledge, which shall be designated as the Basic Peace Officer Certification Academy.

(b) Major block curriculum changes and/or changes in the total number of hours of the Basic Academy shall only be made upon the consideration of written or oral communication from local law enforcement chiefs, sheriffs, agency heads and court rulings.

(c) The curriculum shall include, but not be limited to the following:

- (1) Orientation/Legal Matters
- (2) First Aid
- (3) Cardiopulmonary Resuscitation
- (4) Firearms
- (5) Criminal Investigation
- (6) Custody Control and Arrest
- (7) Traffic
- (8) Patrol
- (9) Community Relations

(d) The Basic Academy shall consist of not less than 300 hours of instruction. Each area shall be assigned a minimum amount of time that must be devoted to that area. A designated minimum amount of time shall be devoted to testing and evaluation. Each topic of instruction to be taught as a separate unit within the areas shall have specifically defined performance objectives. The progress of each trainee shall be measured through testing and examination.



### **Section 503. Basic Academy Rules and Regulations**

Specific rules governing the administration of the Basic Academy shall be formulated by the Coordinator of the Academy. Said rules may be revised as deemed necessary by the Coordinator to provide for safe, efficient operation of the Academy. The Coordinator shall have the authority to dismiss any trainee who is in violation of the rules and regulations.

### **Section 504. Academic Requirements**

(a) In order to successfully complete the Basic Academy program, trainees must achieve a score of seventy percent (70%), or higher, in all examinations and proficiency tests, except First Aid which shall require eighty percent (80%), or higher.

(b) A trainee who fails a specific block examination will be permitted to retake that block examination a second time, within five (5) days of the first examination. If a trainee fails the block examination a second time, the trainee will be required to repeat the entire block on instruction and the block examination.

(c) If a trainee misses any time during Legal Matters, Patrol Functions or Custody Control and Arrest, the trainee will not be permitted to take any of those block examinations. Rather, the trainee will be rescheduled to make-up that time in the next scheduled Basic Academy.

### **Section 505. Requirements for Instructors**

(a) To qualify as a General Instructor, the following qualifications must be met:

- (1) Have a minimum of two (2) years' experience in law enforcement, and
- (2) Successfully completed an instructor development school, or
- (3) Possesses a teaching certification for secondary education; or
- (4) Possesses an advanced degree in the field of secondary adult education; or
- (5) Be qualified to instruct at an accredited 4-year college or university.

(b) To qualify as a Specialized Instructor, the following qualifications must be met:

- (1) Meet the qualifications of a general instructor, and
- (2) Successfully complete an instructor development school in the specialized field for which the course of instruction is to be taught.

(c) Specialized Instructor shall include subject areas such as:

- (1) Firearms Instructor
- (2) Self-defense Instructor

- (3) Police Radar Instructor
- (4) Law Enforcement Driver Training
- (5) CPR/First Aid Instructor

(d) Adjunct Instructors must possess exceptional training, experience, or educational attainments which qualifies him or her to teach particular subject areas without the benefit of instructor development training. These shall be areas that can be classified as professionally recognized and formal in nature.

(e) The Chief of the Lighthorse Police shall make the determination of the individual's qualifications upon review of the documentation presented.

**Section 506. Certification by Reciprocity**

(a) Any officer who has been certified by a state or federal peace officer standards and training agency may obtain tribal certification by reciprocity, under the following conditions:

- (1) The officer must meet the minimum peace officer employment standards set forth by the Code of Law, and
- (2) The officer must have been employed as a peace officer within the previous two years, or
- (3) The officer must have completed a Basic Reserve Peace Officer Academy, and
- (4) The officer must have completed a bachelor's degree in criminal justice or police science.

(b) Certification by reciprocity shall be granted by the Lighthorse Police Chief upon review and approval of documentation submitted by the individual.

## **CHAPTER SIX**

### **MISCELLANEOUS PROVISIONS**

#### **Section 601. Return of Equipment**

Upon the resignation, death or discharge of any member of the Lighthorse Police, all articles or property issued in connection with the employee's official duties must be returned to the Chief of Police or the officer's representative. This provision may be waived by Police Regulation as to uniforms and other equipment other than firearms for officers honorably retired or in case of death while in service.

#### **Section 602. Delegation and Assignment of Duties**

By Police Regulation, the duties of the Chief of Police may be delegated to other positions within the Police Department. The Chief of Police shall assign such duties to officers and employees of lesser rank as may be necessary for the proper functioning of the Department.

#### **Section 603. Immunities**

No member of the Lighthorse Police Department, and no person acting at the request and direction of such member during an emergency situation, shall be held to answer for any personal, civil or criminal liability for actions taken within the scope of the person's authority while in the discharge of the Officer's Police duties under the law.

#### **Section 604. Bonding**

The Chief of Police by regulation shall provide for the bonding of all Police Officers in the enforcement division and such other officers as may be bonded in an amount determined by the Chief of Police with the consent of the Principal Chief. The cost of such bonds shall be paid from tribal funds. The sovereign immunity of the Tribe is hereby waived in the Tribal Court only and only to the extent and scope of the coverage of such bonds as may be in force at any particular time, as to actions by persons injured due to excessive use of force, violation of civil rights, or other causes inflicted by the Lighthorse Police Department personnel. No award or claim against the Nation or its Police Officers may exceed the amount of the bond in effect. This section shall not be constructed to provide any independent cause of action against either the Tribe or its Police Officers.

#### **Section 605. 638 Contract Police Officers**

Where applicable, officers funded by a BIA 638 contract shall follow the BIA Law Enforcement Handbook.

## **CHAPTER SEVEN**

### **ALCOHOL CONTROL AND ENFORCEMENT**

#### **Section 701. Title**

This Ordinance shall be known as the “Seminole Nation of Oklahoma Alcohol Control and Enforcement Ordinance.”

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05,  
April 30, 2011.]

#### **Section 702. Authority**

This Ordinance is enacted pursuant to Article V of the Constitution of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05,  
April 30, 2011.]

#### **Section 703. Purpose**

The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of alcohol on Tribal lands of the Seminole Nation of Oklahoma. The enactment of this Ordinance will enhance the ability of the Seminole Nation of Oklahoma to control all such alcohol-related activities within the jurisdiction of the Tribe and will provide an important source of revenue for the continued operation and strengthening of the Seminole Nation of Oklahoma and the delivery of important governmental services.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05,  
April 30, 2011.]

#### **Section 704. Application of Federal Law**

Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. § 1154 and other statutes), except when in conformity both with the laws of the State and the Tribe (18 U.S.C. § 1161). As such, compliance with this Ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05,  
April 30, 2011.]

#### **Section 705. Administration of Ordinance**

The General Council, through its powers vested under Article V of the Constitution of the Seminole Nation of Oklahoma and this Ordinance, delegates to the Alcohol Regulatory Authority the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include, but are not limited to, the following actions:

(a) Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees, fines and other penalties;

(b) Execute all necessary documents; and

(c) Perform all matters and actions incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 706. Sovereign Immunity Preserved**

(a) The Tribe is immune from suit in any jurisdiction except to the extent that the General Council of the Seminole Nation of Oklahoma expressly and unequivocally waives such immunity by approval of such written resolution.

(b) Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Seminole Nation of Oklahoma or the Alcohol Regulatory Authority as an agency of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 707. Applicability**

This Ordinance shall apply to all commercial enterprises located within Tribal lands consistent with applicable Federal Liquor Laws.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 708. Computation of Time**

Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Ordinance, the day of the act, event, or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. For the purposes of this Ordinance, the term “legal holiday” shall mean all legal holidays under Tribal or Federal law. All documents mailed shall be deemed served at the time of mailing.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 709. Liberal Construction**

Provisions of this Ordinance shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 710. Collection of Applicable Fees and Fines**

The Alcohol Regulatory Authority shall have the authority to collect all applicable and lawful fees and fines from any person or licensee as imposed by this Ordinance. The failure of any Licensee to pay all applicable fees or fines for the sale of alcoholic beverages shall subject the Licensee to penalties, including, but not limited to the revocation of said license.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 711. Matter of Special Interest**

The manufacture, distribution, possession, sale, and consumption of alcoholic beverages within the jurisdiction of the Seminole Nation of Oklahoma are matters of significant concern and special interest to the Tribe. The General Council hereby declares that the policy of the Seminole Nation of Oklahoma is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, possession and sale of alcoholic beverages for commercial purposes and to promote temperance in the use and consumption of alcoholic beverages by increasing the Tribe's control and enforcement of laws over such activities on Tribal lands.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 712. Federal Law**

The introduction of alcohol within the jurisdiction of the Tribe is currently prohibited by federal law (18 U.S.C. § 1154), except as provided for therein, and the Tribe is expressly delegated the right to determine when and under what conditions alcohol, including alcoholic beverages, shall be permitted thereon (18 U.S.C. § 1161).

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 713. Need for Regulation**

The Tribe finds that the federal liquor laws prohibiting the introduction, manufacture, distribution, possession, sale, and consumption of alcoholic beverages within the Tribal lands have proven ineffective and that the problems associated with same should be addressed by the laws of the Tribe, with all such business activities related thereto subject to the regulatory authority of the Alcohol Regulatory Authority.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

## **Section 714. Geographic Locations**

The Tribe finds that the introduction, manufacture, distribution, possession, sale, and consumption of alcohol, including alcoholic beverages, shall be regulated under this Ordinance only where such activity will be conducted within or upon Tribal lands.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

## **Section 715. Definitions**

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, including, but not limited to alcoholic beverages as defined herein, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for purposes of consumption by humans.

(b) "Alcohol Regulatory Authority" means the three-person subordinate committee established under this Chapter.

(c) "Alcoholic Beverage(s)" when used in this Ordinance means, and shall include any liquor, beer, spirits, or wine, by whatever name they may be called, and from whatever source and by whatever process they may be produced, and which contain a sufficient percent of alcohol by volume which, by law, makes said beverage subject to regulation as an intoxicating beverage under the laws of the State of Oklahoma. Alcoholic beverages include all forms of "low-point beer" as defined under the laws of the State of Oklahoma.

(d) "Applicant" means any person who submits an application to the Alcohol Regulatory Authority for an Alcoholic Beverage License and who has not yet received such a License.

(e) "Constitution" means the Constitution of the Seminole Nation of Oklahoma of Oklahoma.

(f) "General Council" means the duly elected legislative body of the Seminole Nation of Oklahoma authorized to act in and on all matters and subjects upon which the Tribe is empowered to act, now or in the future.

(g) "Federal Liquor Laws" means all laws of the United States of America that apply to or regulate in any way the introduction, manufacture, distribution, possession, or sale of any form of Alcohol, including, but not limited to 18 U.S.C. §§ 1154 & 1161.

(h) "Legal Age" means twenty-one (21) years of age.

(i) “License” or "Alcoholic Beverage License" means a license issued by the Alcohol Regulatory Authority authorizing the introduction, manufacture, distribution, or sale of Alcoholic beverages for commercial purposes under the provisions of this Ordinance.

(j) “Licensee” means a commercial enterprise that holds an Alcoholic Beverage License issued by the Alcohol Regulatory Authority and includes any employee or agent of the licensee.

(k) “Liquor store” means any business, store, or commercial establishment at which Alcohol is sold and shall include any and all businesses engaged in the sale of alcoholic beverages, whether sold as packaged or by the drink.

(l) “Manufacturer” means any person engaged in the manufacture of alcohol, including, but not limited to the manufacture of alcoholic Beverages.

(m) "Oklahoma Liquor License" means any license or permit issued by the State of Oklahoma, including any agency, subdivision, or county thereof, regulating any form of alcohol, including, but not limited to any form of alcoholic Beverage. Any license or permit issued for the sale or distribution of "low-point beer", as defined under Oklahoma law, shall be considered an "Oklahoma Liquor License" under this Ordinance.

(n) “Ordinance” means this Seminole Nation of Oklahoma Alcohol Control Ordinance, as hereafter amended.

(o) The words “package” or "packaged" means the sale of any alcoholic beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or location designated on the seller's License.

(p) “Public place” means and shall include any tribal, county, state, or federal highways, roads, and rights-of-way; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; public restaurants, buildings, meeting halls, hotels, theaters, retail stores, and business establishments generally open to the public and to which the public is allowed to have unrestricted access; and all other places to which the general public has unrestricted right of access and that are generally used by the public. For the purpose of this Ordinance, “public place” shall also include any privately-owned business property or establishment that is designed for or may be regularly used by more persons other than the owner of the same, but shall not include the private, family residence of any person.

(q) The words “sale(s)”, “sell”, or "sold" mean the exchange, barter, traffic, furnishing, or giving away for commercial purpose of any alcoholic beverage by any and all means, by whatever name commonly used to describe the same, by any commercial enterprise or person to another person.

(r) “Tribal Court” means the Courts of the Seminole Nation of Oklahoma, as established under the Constitution of the Seminole Nation of Oklahoma and/or any other administrative Tribal Court established by a General Council Ordinance.



(s) “Tribal land(s)” shall mean and reference the geographic area that includes all land included within the definition of “Indian country” as established and described by federal law and that is under the jurisdiction of the Seminole Nation of Oklahoma, including, but not limited to all lands held in trust by the federal government, located within the same, as are now in existence or may hereafter be added to.

(t) “Tribal law” means the Constitution of the Seminole Nation of Oklahoma and all laws, ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribe.

(u) “Tribe” shall mean the Seminole Nation of Oklahoma of Oklahoma.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 716. Prohibition of the Unlicensed Sale of Alcoholic Beverages**

This Ordinance prohibits the introduction, manufacture, distribution, or sale of alcoholic beverages for commercial purposes, other than where conducted by a licensee in possession of a lawfully issued license in accordance with this Ordinance. The federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to all penalties and provisions of any and all Federal and or Tribal laws.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 717. License Required**

(a) Any and all sales of alcoholic beverages conducted upon Tribal lands shall be permitted only where the seller: (i) holds a current Alcoholic Beverage License, duly issued by the Alcohol Regulatory Authority; and (ii) prominently and conspicuously displays the license on the premises or location designated on the license.

(b) A licensee has the right to engage only in those activities involving alcoholic beverage expressly authorized by such license in accordance with this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 718. Sales for Cash**

All sales of alcoholic beverages conducted by any person or commercial enterprise upon Tribal lands shall be conducted on a cash-only basis, and no credit for said purchase and consumption of same shall be extended to any person, organization, or entity, except that this provision does not prohibit the payment of same by use of credit cards acceptable to the seller (including but not limited to VISA, MasterCard, or American Express).

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 719. Personal Consumption**

All sales of alcoholic beverages shall be for the personal use and consumption of the purchaser and or his/her guest(s) of legal age. The re-sale of any alcoholic beverage purchased within or upon Tribal lands by any person or commercial enterprise not licensed as required by this Ordinance is prohibited.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 720. Tribal Enterprises**

No employee or operator of a commercial enterprise owned by the Tribe shall sell or permit any person to open or consume any alcoholic beverage on any premises or location, or any premises adjacent thereto, under his or her control, unless such activity is properly licensed as provided in this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 721. Licensing Eligibility**

Only applicants operating upon Tribal lands shall be eligible to receive a license for the sale of any alcoholic beverage under this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 722. Licensing Application Process**

(a) The Alcohol Regulatory Authority may cause a license to be issued to any applicant as is it may deem appropriate, but not contrary to the best interests of the Tribe and its Tribal members. Any applicant that desires to receive any Alcoholic beverage License, and that meets the eligibility requirements pursuant to this Ordinance, must apply to the Alcohol Regulatory Authority for the desired class of license. Any such person as may be empowered to make such application, shall: (i) fully and accurately complete the application provided by the Alcohol Regulatory Authority; (ii) pay the Alcohol Regulatory Authority such application fee as may be required; and (iii) submit such application to the Alcohol Regulatory Authority for consideration.

(b) All application fees paid to the Alcohol Regulatory Authority are nonrefundable upon submission of any such application. Each application shall require the payment of a separate application fee.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 723. Term and Renewal of Licenses**

(a) The term of all licenses issued under this Ordinance shall be for a period not to exceed one (1) year from the original date of issuance and may be renewed thereafter on a year-to-year basis, in compliance with this Ordinance and any rules and/or regulations hereafter adopted by the Alcohol Regulatory Authority.

(b) Each license may be considered for renewal by the Alcohol Regulatory Authority annually upon the licensee's submission of a new application and payment of all fees. Such renewal application shall be submitted to the Alcohol Regulatory Authority at least thirty (30) days and no more than ninety (90) days prior to the expiration of an existing license. If a license is not renewed prior to its expiration, the licensee shall cease and desist all activity as permitted under the License, including the sale of any alcoholic beverages, until the renewal of such license is properly approved by the Alcohol Regulatory Authority. The Alcohol Regulatory Authority, in its sole discretion, may issue a temporary license to an applicant in lieu of a renewal license for such time period as is necessary for the Alcohol Regulatory Authority to complete its regulatory processes prior to the approval of a renewal license.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 724. Classes of Licenses**

The Alcohol Regulatory Authority shall have the authority to issue the following classes of Alcoholic Beverage License:

(a) "Retail On-Site General License" authorizing the licensee to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or location designated in the license. This class of license includes, but is not limited to, hotels where alcoholic beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(b) "Retail On-Site Beer and Wine License" authorizing the licensee to sell only beer and wine at retail to be consumed by the buyer only on the premises or location designated in the license. This class of license includes, but is not limited to, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(c) "Retail Off-Site General License" authorizing the licensee to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(d) "Retail Off-Site Beer and Wine License" authorizing the licensee to sell only beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(e) “Manufacturer's License” authorizing the applicant to manufacture alcoholic beverages for the purpose of wholesale to retailers on or off Tribal lands, but not authorizing the sale of alcoholic beverages at retail.

(f) “Temporary License” authorizing the sale of alcoholic beverages on a temporary basis for premises or at a location temporarily occupied by the licensee for a picnic, social gathering, or similar occasion. A temporary license may not be renewed upon expiration. A new application must be submitted for each such license.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 725. Application Form and Content**

An application for any license shall be made to the Alcohol Regulatory Authority and shall contain at least the following information:

(a) The name and address of the applicant, including the names and addresses of all of the principal officers, directors, managers, and other employees with primary management responsibility related to the sale of alcoholic beverages;

(b) The specific area, location, and/or premise(s) for which the License is applied;

(c) The hours that the applicant will sell the alcoholic beverages;

(d) For temporary licenses, the dates for which the license is sought to be in effect;

(e) The class of Alcoholic Beverage License applied for, as set forth in Section 724 herein;

(f) Whether the applicant has an Oklahoma Liquor License;

(g) A sworn statement by the applicant to the effect that none of the applicant's officers, directors, managers, and or employees with primary management responsibility related to the sale of alcoholic beverages, have ever been convicted of a felony under the law of any jurisdiction, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance; and

(h) The application shall be signed and verified by the applicant under oath and notarized by a duly authorized representative.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 726. Public Hearing**

(a) Upon receipt of an application for issuance or renewal of a license, and the payment of any fees required by the Alcohol Regulatory Authority, the Alcohol Regulatory

Authority shall set the consideration of such application for a public hearing. Notice of the time and place of such hearing shall be mailed to the applicant and provided to the public at least twenty (20) calendar days before the date of the hearing. Notice shall be mailed to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be provided to the public by publication in a newspaper of general circulation within the jurisdiction of the Tribe. The notice published in the newspaper shall include: (i) the name of the applicant; (ii) whether the hearing will consider a new license issuance or renewal of an existing license; (iii) the class of license applied for; and (iv) an address and general description of the area where the alcoholic beverages will be or have been sold.

(b) At such hearings, the Alcohol Regulatory Authority shall hear from any person who wishes to speak for or against the application, subject to the limitation in paragraph (c) of this section, and any other limitations herein.

(c) The Alcohol Regulatory Authority shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 727. Action on the Application**

The Alcohol Regulatory Authority shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Alcohol Regulatory Authority shall have the authority to deny, approve, or approve with conditions the application, consistent with this Ordinance and the laws of the Tribe. Upon approval of an application, the Alcohol Regulatory Authority shall issue a license to the applicant in a form to be approved from time to time by the Alcohol Regulatory Authority.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 728. Denial of License or Renewal**

An application for a new license or license renewal may be denied for one or more of the following reasons.

- (a) The applicant materially misrepresented facts contained in the application;
- (b) The applicant is currently not in compliance with this Ordinance or any other Tribal or Federal laws;
- (c) Granting of the license, or renewal thereof, would create a threat to the peace, safety, morals, health, or welfare of the Tribe;
- (d) The applicant has failed to complete the application properly or has failed to tender the appropriate fee.

(e) A verdict or judgment has been entered against or a plea of nolo contendere has been entered by an applicants' officer, director, manager, or any other employee with primary management responsibility related to the sale of alcoholic beverages, to any offense under Tribal, Federal, or State laws prohibiting or regulating the sale, use, possession or giving away of alcoholic beverages.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 729. Temporary Denial of License**

(a) If the application is denied solely on the basis of Section 728(d), the Alcohol Regulatory Authority shall, within fourteen (14) days of such action, deliver in person or by mail a written notice of temporary denial to the applicant. Such notice of temporary denial shall: (i) set forth the reason(s) for denial; and (ii) state that the temporary denial will become a permanent denial if the reason(s) for denial are not corrected within fifteen (15) days following the mailing or personal delivery of such notice.

(b) In the case of denial of a renewal, the Alcohol Regulatory Authority, in its sole discretion, may issue a temporary license to an applicant in lieu of a renewal license for such time period as is necessary for the applicant to cure such deficiency as has been identified under Section 728(d), and for such time period is necessary for the Alcohol Regulatory Authority to complete its regulatory processes prior to the approval of a renewal license.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 730. Cure**

If an applicant is denied a license, the applicant may cure the deficiency and resubmit the application for consideration. each re-submission will be treated as a new application for license or renewal of a license, and the appropriate fee shall be due upon re-submission.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 731. Investigation**

Upon receipt of an application for the issuance, transfer, or renewal of a license, the Alcohol Regulatory Authority shall make a thorough investigation to determine whether the applicant and the premises or location for which a license is applied for qualifies for a license, and whether the provisions of this Ordinance have been complied with. The Alcohol Regulatory Authority shall investigate all matters connected therewith which may affect law enforcement, public health, welfare, and morals.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 732. Procedures for Appealing a Denial or Condition of Application**

Any applicant for a license or licensee who believes the denial of their license, request for renewal, or condition imposed on their license was wrongfully determined may appeal the decision of the Alcohol Regulatory Authority in accordance with the Alcohol Regulatory Authority Rules and Regulations.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 733. Revocation of License**

The Alcohol Regulatory Authority may initiate action to revoke a license whenever it is brought to the attention of the Alcohol Regulatory Authority that a licensee:

- (a) Has materially misrepresented facts contained in any license application;
- (b) Is not in compliance with this Ordinance or any other Tribal or Federal laws material to the issue of alcohol licensing;
- (c) Failed to comply with any condition of a license, including failure to pay any fee required under this Ordinance;
- (d) Has had a verdict, or judgment entered against, or has had a plea of nolo contendere entered by any of its officers, directors, managers or any employees with primary responsibility over the sale of alcoholic beverages, as to any offense under Tribal, Federal or State laws prohibiting or regulating the sale, use, or possession, of alcoholic beverages;
- (e) Failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the premises or location designated in the license, or any adjacent area under their control, within a reasonable time after receipt of a notice to make such corrections has been mailed or personally delivered by the Alcohol Regulatory Authority; or
- (f) Has had their Oklahoma Liquor License suspended or revoked. [HISTORY:

Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 734. Initiation of Revocation Proceedings**

- (a) Revocation proceedings may be initiated by either: (i) the Alcohol Regulatory Authority, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (ii) by any person who files a complaint with the Alcohol Regulatory Authority.
- (b) The complaint shall be in writing and signed by the maker. Both the complaint and resolution shall state facts showing that there are specific grounds under this Ordinance, which would authorize the Alcohol Regulatory Authority to revoke the License(s).

(c) The Alcohol Regulatory Authority shall cause the consideration of such revocation to be set for a public hearing before the Alcohol Regulatory Authority on a date no later than thirty (30) days from the Alcohol Regulatory Authority's receipt of a complaint or adoption of a resolution.

(d) Notice of the time, date, and place of such hearing shall be provided to the licensee and the public in the same manner as set forth in Section 726 herein. The notice of such hearing shall state that the licensee has the right to file a written response to the complaint or resolution with the Alcohol Regulatory Authority, verified under oath and signed by the licensee, no later than ten (10) days prior to the hearing date.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 735. Revocation Hearing**

Any hearing held on any complaint shall be held under such rules and regulations as the Alcohol Regulatory Authority may prescribe. Both the licensee and the person filing the complaint shall have the right to present witnesses to testify and to present written documents in support of their positions to the Alcohol Regulatory Authority. The Alcohol Regulatory Authority shall render its decision within sixty (60) days after the date of the hearing. The decision of the Alcohol Regulatory Authority shall be final.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 736. Delivery of License**

Upon revocation of a license, the licensee shall forthwith deliver their license to the Alcohol Regulatory Authority.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 737. Transferability of Licenses**

Alcoholic beverage licenses shall be issued to a specific Licensee for use at a single premises or location (business enterprise) and shall not be transferable for use by any other premises or location. Separate licenses shall be required for each of the premises of any licensee having more than one premises or location where the sale, distribution, or manufacture of alcoholic beverages may occur.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]



### **Section 738. Posting of License**

Every licensee shall post and keep posted its license(s) in a prominent and conspicuous place(s) on the premises or location designated in the license. Any license posed on a premises or location not designated in such license shall not be considered valid and shall constitute a separate violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 739. Appointment of Alcohol Regulatory Authority Subordinate Committee**

Two members of the subordinate committee shall be appointed by the Principal Chief and approved by a majority of the General Council pursuant to Article 3, Section 4 of the Constitution. The Chief of Police shall serve as the third member of the subordinate committee. The Principal Chief and Assistant Chief shall serve as ex-officio members of the Alcohol Regulatory Authority subordinate committee. Terms of office shall be for four years. Other than the Chief of Police, no voting member of the Alcohol Regulatory Authority shall be an elected official of the Seminole Nation of Oklahoma or an employee of the Seminole Nation of Oklahoma during his or her term of office on the Alcohol Regulatory Authority.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 740. Alcohol Regulatory Authority**

In furtherance of this Ordinance, the Alcohol Regulatory Authority shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder:

- (a) To adopt and enforce rules and regulations governing the sale, manufacture, distribution, and possession of alcoholic beverages within the Tribal lands of the Seminole Nation of Oklahoma;
- (b) To request and provide payment for services of the Seminole Nation of Oklahoma Division of Commerce to perform all administrative and regulatory responsibilities of the Alcohol Regulatory Authority hereunder other than those responsibilities specifically delegated to the members of the subcommittee comprising the Alcohol Regulatory Authority;
- (c) To issue licenses permitting the sale, manufacture, distribution, and possession of alcoholic beverages within the Tribal lands;
- (d) To give reasonable notice and to hold hearings on violations of this Ordinance, and for consideration of the issuance or revocation of licenses hereunder;
- (e) To deny applications and renewals for licenses and revoke issued licenses as provided in this Ordinance;

- (f) To bring such other actions as may be required to enforce this Ordinance;
- (g) To prepare and deliver such reports as may be required by law or regulation; and
- (h) To collect fees and penalties as may be required, imposed, or allowed by law or regulation, and to keep accurate books, records, and accounts of the same.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 741. Right of Inspection**

Any premises or location of any commercial enterprise licensed to manufacture, distribute, or sell alcoholic beverages pursuant to this Ordinance shall be open for inspection by the Alcohol Regulatory Authority for the purpose of insuring the compliance or noncompliance of the licensee with all provisions of this Ordinance and any applicable Tribal laws or regulations.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 742. Limitation on Powers**

In the exercise of its powers and duties under this Ordinance, agents, employees, or any other affiliated persons of the Alcohol Regulatory Authority shall not, whether individually or as a whole:

- (a) Accept any gratuity, compensation, or other thing of value from any alcoholic beverage wholesale, retailer, or distributor, or from any applicant or licensee; or
- (b) Waive the sovereign immunity of the Seminole Nation of Oklahoma, or of any agency, commission, or entity thereof without the express written consent by resolution of the General Council of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 743. Annual Fee Schedule**

The Annual Fee Schedule for each class of Alcoholic Beverage License is as follows:

- (a) Retail On-Site General License: \$2,000.00
- (b) Retail On-Site Beer and Wine License: \$1,500.00
- (c) Retail Off-Site General License: \$1,000.00
- (d) Retail Off-Site Beer and Wine License: \$500.00
- (e) Manufacturer's License: \$250.00

- (f) Temporary License: \$100.00 per event. No annual license available.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 744. Renewal Fees and Late Charge Fine**

Payment of the annual fee for renewal licenses is due prior to the date of expiration of the license. Past due renewal fees shall be assessed a late charge fine equal to 10% of the annual license fee per month until paid. Failure to pay the annual fee, renewal fee or late charge fine shall result in revocation of the license.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 745. Manufacture, Sale, or Distribution Without License**

Any person who manufactures, distributes, sells, or offers for sale or distribution, any alcoholic beverage in violation of this Ordinance, or who operates any commercial enterprise on Tribal lands that has alcoholic beverages for sale or in their possession without a proper license properly posted, as required in Section 738, shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 746. Unlawful Purchase**

Any person who purchases any alcoholic beverage on Tribal lands from a person or commercial enterprise that does not have a license to manufacture, distribute, or sell alcoholic beverages properly posted shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 747. Intent to Sell**

Any person who keeps, or possesses, or causes another to keep or possess, upon his person or any premises within his control, any alcoholic beverage, with the intent to sell or to distribute the same contrary to the provisions of this Ordinance, shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 748. Sale to Intoxicated Person**

Any person who knowingly sells or serves an alcoholic beverage to a person who is visibly intoxicated shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 749. Public Conveyance**

Any person engaged in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to consume any alcoholic beverage in any such public conveyance shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 750. Age of Consumption**

No person under the age of twenty-one (21) years may possess or consume any alcoholic beverage on Tribal lands, and any such possession or consumption shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 751. Serving Underage Person**

No person shall sell or serve any alcoholic beverage to a person under the age of twenty-one (21) or permit any such person to possess or consume any alcoholic beverages on the premises or on any premises under their control. Any licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every alcoholic beverage sold or served and or consumed by such an underage person.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 752. False Identification**

Any person who purchases or who attempts to purchase any alcoholic beverage through the use of false or altered identification that falsely purports to show such person to be over the age of twenty-one (21) years shall be in violation of this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 753. Documentation of Age**

(a) Any seller or server of any alcoholic beverage shall be required to request proper and satisfactory documentation of age of any person who appears to be thirty-five (35) years of age or younger. When requested by a seller or server of alcoholic beverages, every person shall be required to present proper and satisfactory documentation of the bearer's age, signature, and

photograph prior to the purchase or delivery of any alcoholic beverage. For purposes of this Ordinance, proper and satisfactory documentation shall include one or more of the following:

- (1) Driver's License or personal identification card issued by any state department of motor vehicles or tribal or federal government agency;
- (2) United States active duty military credentials;
- (3) Passport.

(b) Any seller, server, or person attempting to purchase an alcoholic beverage, who does not comply with the requirements of this section shall be in violation of this Ordinance and subject to civil penalties, as determined by the Alcohol Regulatory Authority.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 754. General Penalties**

Any person or commercial enterprise determined by the Alcohol Regulatory Authority to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation, except as provided herein. The Alcohol Regulatory Authority may adopt by resolution a separate written schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general public health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500.00) per violation limitation set forth above. The civil penalties provided for herein shall be in addition to any criminal penalties that may be imposed under any other Tribal, Federal, or State laws.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

#### **Section 755. Initiation of Action**

Any violation of this Ordinance shall constitute a public nuisance. The Alcohol Regulatory Authority may initiate and maintain an action in Tribal Court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance. The Alcohol Regulatory Authority shall not be required to post any form of bond in such action.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

## **Section 756. Contraband; Seizure; Forfeiture**

(a) All alcoholic beverages held, owned, or possessed within Tribal lands by any person, commercial enterprise, or licensee operating in violation of this Ordinance are hereby declared to be contraband and subject to seizure and forfeiture to the Tribe.

(b) Seizure of contraband as defined in this Ordinance shall be done by the Alcohol Regulatory Authority, with the assistance of law enforcement, and all such contraband seized shall be inventoried and maintained by the Alcohol Regulatory Authority pending a final order of the Alcohol Regulatory Authority. The owner of the contraband seized may alternatively request that the contraband seized be sold and the proceeds received there from be maintained by law enforcement pending a final order of the Alcohol Regulatory Authority. The proceeds from such a sale are subject to forfeiture in lieu of the seized contraband.

(c) Within ten (10) days following the seizure of such contraband, a hearing shall be held by the Alcohol Regulatory Authority, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

(d) Notice of the hearing of at least ten (10) days shall be given to the person from whom the property was seized and the owner, if known. If the owner is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on Tribal lands. The notice shall describe the property seized, and the time, place, and cause of seizure, and list the name and place of residence, if known, of the person from whom the property was seized. If upon the hearing, the evidence warrants, or, if no person appears as a claimant, the Alcohol Regulatory Authority shall thereupon enter a judgment of forfeiture, and all such contraband shall become the property of the Seminole Nation of Oklahoma. If upon the hearing the evidence does not warrant forfeiture, the seized property shall be immediately returned to the owner.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

## **Section 757. Nuisance**

Any room, house, building, vehicle, structure, premises, or other location where alcoholic beverages are sold, manufactured, distributed, bartered, exchanged, given away, furnished, or otherwise possessed or disposed of in violation of this Ordinance, or of any other Tribal, Federal, or State laws related to the transportation, possession, distribution or sale of alcoholic beverages, and including all property kept therein, or thereon, and used in, or in connection with such violation is hereby declared to be a nuisance upon any second or subsequent violation of the same.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 758. Action to Abate Nuisance**

Upon a determination by the Alcohol Regulatory Authority that any such place or activity is a nuisance under any provision of this Ordinance, the Tribe or the Alcohol Regulatory Authority may bring a civil action in the Tribal Court to abate and to perpetually enjoin any such activity declared to be a nuisance. Such injunctive relief may include a closure of any business or other use of the property for up to one (1) year from the date of the such injunctive relief, or until the owner, lessee or tenant shall: (i) give bond of no less than Twenty-Five Thousand dollars (\$25,000) to be held by the Alcohol Regulatory Authority and be conditioned that any further violation of this Ordinance or other Tribal laws will result in the forfeiture of such bond; and (ii) pay of all fines, costs and assessments against him/her/it. If any condition of the bond is violated, the bond shall be forfeit and the proceeds recoverable by the Alcohol Regulatory Authority through an order of the Tribal Court. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 759. Use and Appropriation of Revenue Received**

All fees, payments, fines, costs, assessments, and any other revenues collected by the Alcohol Regulatory Authority under this Ordinance, from whatever sources, shall be expended first for the administrative costs incurred in the administration and enforcement of this Ordinance including costs of law enforcement. Any excess funds shall be subject to and available for appropriation by the Alcohol Regulatory Authority to the Tribe for essential governmental and social services related to drug and alcohol education, counseling and treatment.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 760. Audit**

The Alcohol Regulatory Authority and its handling of all funds collected under this Ordinance is subject to review and audit by the Tribe as part of the annual financial audit of the Alcohol Regulatory Authority.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

### **Section 761. Reports**

The Alcohol Regulatory Authority shall submit to the General Council a quarterly report and accounting of all fees, payments, fines, costs, assessments, and all other revenues collected and expended pursuant to this Ordinance.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 762. Severability**

If any provision or application of this Ordinance is found invalid and or unenforceable by a court of competent jurisdiction, such determination shall not be held to render ineffectual any of the remaining provisions or applications of this Ordinance not specifically identified thereby, or to render such provision to be inapplicable to other persons or circumstances.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 763. Construction**

Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 764. Effective Date**

This Ordinance shall be effective upon certification by the Secretary of the Interior, publication in the Federal Register and recorded in the office of the Clerk of the Tribal Court.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]

**Section 765. Prior Law Repealed**

Any and all prior enactments of the Seminole Nation of Oklahoma that are inconsistent with the provisions of this Ordinance are hereby rescinded.

[HISTORY: Ordinance No. 2011-01, January 29, 2011; Amended April 30, 2011; Amended April 30, 2011.]

**Section 766. Amendment**

This Ordinance may only be amended by written resolution approved by the General Council.

[HISTORY: Enacted by TO 2011-01, January 29, 2011; amended by TO 2011-05, April 30, 2011.]



**TITLE 25  
PRINCIPAL CHIEF  
INDEX**

<b>TITLE 25 PRINCIPAL CHIEF INDEX .....</b>	<b>i</b>
<b>TITLE 25 PRINCIPAL CHIEF .....</b>	<b>1</b>
<b>CHAPTER ONE OFFICE OF CHIEF.....</b>	<b>1</b>
<b>CHAPTER TWO APPOINTMENTS.....</b>	<b>2</b>
Section 201. Appointments of Delegates for Special Meetings .....	2
Section 202. Appointment of Permanent Delegates .....	2
Section 203. RESERVED .....	2
Section 204. Approval of Contracts.....	2

**TITLE 25**  
**PRINCIPAL CHIEF**

**CHAPTER ONE**  
**OFFICE OF CHIEF**

RESERVED

## **CHAPTER TWO APPOINTMENTS**

### **Section 201. Appointments of Delegates for Special Meetings**

Appointments by the Chief of representatives and delegates to special meetings and conferences are hereby approved by the General Council and require no further approval by the General Council or the Executive Committee.

[HISTORY: Enacted by TO 70-3, June 6, 1970; codified by TO 91-12, November 16, 1991.]

### **Section 202. Appointment of Permanent Delegates**

Approval of appointments granted under section 201 herein do not apply to permanent representatives or delegates to councils, organizations or other bodies, which appointments shall require approval as provided by the Constitution and other ordinances.

[HISTORY: Enacted by TO 70-3, June 6, 1970; codified by TO 91-12, November 16, 1991.]

### **Section 203. RESERVED**

### **Section 204. Approval of Contracts**

The Principal Chief is authorized by the Seminole Nation General Council pursuant to the Seminole Constitution, Article V, Section f, to execute contracts that do not exceed the Simplified Acquisition Threshold on behalf of the Nation. The amount of the Simplified Acquisition Threshold is defined in the Federal Acquisition Regulations at 48 C.F.R. § 2.101.

[HISTORY: Enacted by TO 2004-14, June 5, 2004; repealed by TO 2005-08, July 16, 2005; re-enacted by TO 2005-14, December 3, 2005; amended by TO 2008-05, March 1, 2008; amended by TO 2014-01, January 25, 2014.]

**TITLE 26  
RECREATION  
INDEX**

<b>TITLE 26 RECREATION INDEX.....</b>	<b>i</b>
<b>TITLE 26 RECREATION.....</b>	<b>1</b>
<b>CHAPTER ONE .....</b>	<b>1</b>
Section 101. Recreation Board .....	1
Section 102. Members .....	1
Section 103. Treasurer.....	1
Section 104. Chairman .....	1
Section 105. Removal of Members .....	1
Section 106. Approval of Recreation Projects.....	1
Section 107. Suspension of Members .....	2
Section 108. Recreation Director.....	2
Section 109. Rules and Regulations.....	2

**TITLE 26**  
**RECREATION**  
**CHAPTER ONE**

**Section 101. Recreation Board**

Repealed.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12,  
November 16, 1991; repealed by TO 92-13, September 5, 1992.]

**Section 102. Members**

Repealed.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12,  
November 16, 1991; repealed by TO 92-13, September 5, 1992.]

**Section 103. Treasurer**

The Treasurer of the Seminole Nation shall serve as Finance Officer for recreation activities and shall be responsible for all funds for the recreation areas delivered to the Treasurer. All funds generated by and through recreation activities shall be forwarded to the Treasurer for deposit into a recreation account. These funds will be used to support recreation activities.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12,  
November 16, 1991; amended by TO 92-13, September 5, 1992.]

**Section 104. Chairman**

Repealed.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12,  
November 16, 1991; repealed by TO 92-13, September 5, 1992.]

**Section 105. Removal of Members**

Repealed.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12,  
November 16, 1991; repealed by TO 92-13, September 5, 1992.]

**Section 106. Approval of Recreation Projects**

(a) Approval; General. Plans of operation and proposed projects for any recreation area under the jurisdiction of the Seminole Nation, except Seminole Nation Days, shall be submitted to the Recreation Director for approval. No project shall be instituted without the

Recreation Director or Executive Department's approval. The Recreation Director or Executive Department shall have the right to refer any matter to the General Council for final disposition.

(b) Approval; Seminole Nation Days. Seminole Nation Days activities shall be under the jurisdiction of the Seminole Nation Days Committee or an official designee. Plans of operations and proposed projects must be official activities listed with the Seminole Nation Days Committee and must be approved by such Committee.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12, November 16, 1991; amended by TO 92-13, September 5, 1992.]

#### **Section 107. Suspension of Members**

Repealed.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12, November 16, 1991; repealed by TO 92-13, September 5, 1992.]

#### **Section 108. Recreation Director**

The position of Recreation Director is hereby established. The Recreation Director will be under the direct supervision of the Executive Department as an employee of the Seminole Nation and shall adhere to the policies and procedures of the tribal employees' manual. The Recreation Director shall be responsible for activities, projects and regulation of any concession and/or other stand or booth which may enhance the social, recreational and cultural opportunities for the Seminole Nation.

[HISTORY: Enacted by 72-1, April 22, 1972; amended by TO 75-2, September 6, 1975; codified by TO 91-12, November 16, 1991; amended by TO 92-13, September 5, 1992.]

#### **Section 109. Rules and Regulations**

Repealed.

[HISTORY: Enacted by TO 72-1, April 22, 1972; codified by TO 91-12, November 16, 1991; repealed by TO 92-13, September 5, 1992.]

**TITLE 27**  
**SECURITIES**  
**RESERVED**

**TITLE 28**  
**TOBACCO AND GASOLINE DISTRIBUTION CODE**  
**INDEX**

<b>TITLE 28 TOBACCO AND GASOLINE DISTRIBUTION CODE INDEX .....</b>	<b>i</b>
<b>TITLE 28 TOBACCO AND GASOLINE DISTRIBUTION CODE .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Title and Effective Date.....	1
Section 102. Findings .....	1
Section 103. Purpose .....	1
Section 104. Other Areas of Taxation; Amendment Necessary.....	1
Section 105. Severability .....	1
Section 106. Definitions .....	2
<b>CHAPTER TWO SEMINOLE NATION TAX COMMISSION.....</b>	<b>4</b>
Section 201. Creation and General Authority of Seminole Nation Tax Commission .....	4
Section 202. Tax Commission Authority over Real and Personal Property Limited .....	4
Section 203. Deposits of Revenues .....	4
<b>CHAPTER THREE TOBACCO LICENSES, PERMITS, AND TAX.....</b>	<b>5</b>
Section 301. Licenses .....	5
Section 302. Annual Base Licensing Fee .....	5
Section 303. Variable Licensing Fee .....	6
Section 304. Collection of Variable License Fees.....	7
Section 305. License Requirements.....	7
Section 306. Acknowledgements by Retail Business Licensees.....	8
Section 307. Noncompliance; Civil Penalties; Revocation of License.....	8
Section 308. Non-Licensed Tobacco Retail Business .....	9
Section 309. Noncompliance; Confiscation of Inventory .....	9
<b>CHAPTER FOUR TOBACCO PRODUCT WHOLESALE DISTRIBUTORS; SPECIAL PROVISIONS.....</b>	<b>10</b>
Section 401. Licenses .....	10
Section 402. Base Licensing Fee.....	10
Section 403. License Requirements.....	10
Section 404. Acknowledgements by Wholesale Business Licensees.....	12
Section 405. Noncompliance; Civil Penalties; Revocation of License.....	12
Section 406. Non-Licensed Tobacco Wholesale Business .....	12



**CHAPTER FIVE GASOLINE AND DIESEL USAGE AND DISTRIBUTION FEE .....13**

Section 501.	Gasoline and Diesel Fuel Usage and Distribution Fee .....	13
Section 502.	Exemption for Tribal Use .....	13
Section 503.	Payment of Fee.....	13
Section 504.	Apportionment of Revenues .....	13
Section 505.	Effective Date .....	14

**CHAPTER SIX MOTOR VEHICLE REGISTRATION AND FEES .....15**

Section 601.	Title .....	15
Section 602.	Findings .....	15
Section 603.	Purpose .....	16
Section 604.	Jurisdiction.....	16
Section 605.	Severability .....	16
Section 606.	Sovereign Immunity .....	16
Section 607.	Application.....	16
Section 608.	Authority .....	17
Section 609.	Definitions .....	17
Section 610.	Fee Imposed On Passenger Automobiles .....	20
Section 610-A.	Apportionment for Land Acquisition .....	22
Section 611.	Fee Imposed on Farm Trucks .....	22
Section 612.	Fee Imposed on Commercial Vehicles.....	23
Section 613.	Fee on Motorcycles and Motorized Bicycles .....	27
Section 614.	Fee on Recreational Vehicles, Motor Homes, and Other Trailers .....	27
Section 615.	Collector's Tags .....	28
Section 616.	Certificates of Title.....	28
Section 617.	Form of a Vehicle Certificate To Title .....	28
Section 618.	Title Fees .....	31
Section 619.	Application for Title and Registration.....	31
Section 620.	Registration Certificate and Tags.....	32
Section 621.	Authorized signature for Registrations and Titles .....	33
Section 622.	Duplicate Registrations.....	33
Section 623.	Duplicate Titles .....	33
Section 624.	Duplicate Tag and Decal .....	33
Section 625.	Additional Information Required .....	34
Section 626.	Motor Vehicle Title Numbers .....	34

Section 627.	Form of Registration Certificate .....	35
Section 628.	Form of Tags .....	36
Section 629.	Personalized Tags.....	37
Section 630.	Form of Decals .....	37
Section 631.	Other Requirements for Motor Vehicles .....	38
Section 632.	Tribally-Owned Vehicles.....	39
Section 633.	Penalties .....	40
Section 634.	Recognition of Foreign Titles and Registration .....	40
Section 635.	Appeals .....	40
Section 636.	Rules Upon Enactment .....	42
Section 637.	Boat and Motor Licensing .....	42
<b>CHAPTER SEVEN RETAIL SALES FEE CODE OF THE SEMINOLE NATION OF OKLAHOMA.....</b>		<b>45</b>
Section 701.	Title .....	45
Section 702.	Effective Date .....	45
Section 703.	Intent.....	45
Section 704.	Findings .....	46
Section 705.	Definitions .....	46
Section 706.	Commission and Director .....	47
Section 707.	Fee on Sales .....	48
Section 708.	Specific Sales .....	49
Section 709.	Impact of Fees .....	49
Section 710.	Payment of Fees .....	49
Section 711.	Penalties.....	50
Section 712.	Bond .....	51
Section 713.	Records .....	51
Section 714.	Exemptions .....	51
Section 715.	Appeals .....	52
Section 716.	Apportionment .....	53
Section 717.	Credits.....	53
Section 718.	Licenses .....	53
Section 719.	Revocation .....	54
Section 720.	Title Headings .....	55
Section 721.	Jurisdiction.....	55
Section 722.	Sovereign Immunity .....	55

Section 723.	Severability .....	55
Section 724.	Letter Rulings.....	55

**TITLE 28**  
**TOBACCO AND GASOLINE DISTRIBUTION CODE**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Title and Effective Date**

This Act shall be known as the Tobacco Retailers and Wholesalers Code of the Seminole Nation of Oklahoma and shall be effective on November 1, 1992.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; amended by TO 92-15, November 14, 1992.]

**Section 102. Findings**

REPEALED.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; repealed by TO 92-15, November 14, 1992.]

**Section 103. Purpose**

REPEALED.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; repealed by TO 92-15, November 14, 1992.]

**Section 104. Other Areas of Taxation: Amendment Necessary**

REPEALED.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; repealed by TO 92-15, November 14, 1992.]

**Section 105. Severability**

The provisions of this Act are severable, and if any part or provision hereof shall be held void by the Nation's District Court or federal court, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of the Act.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; amended by TO 92-15, November 14, 1992.]

#### **Section 106. Definitions**

The following words when used in this Act shall, for the purposes of this act have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(a) "BCR Commission" or "Commission" shall mean the Business and Corporate Regulatory Commission of the Seminole Nation established pursuant to Title 3A of the Code of Laws of the Seminole Nation.

(b) "Compact" means an intergovernmental agreement.

(c) "Nation's District Court" or "District Court of the Nation" shall mean the tribal court of the Seminole Nation.

(d) "Nation's Police" means the Police of the Seminole Nation or the Bureau of Indian Affairs Police.

(e) "Entity" shall mean an individual, partnership, corporation, band and the Seminole Nation of Oklahoma.

(f) "License" shall mean the written permission issued by the BCR Commission to conduct limited business acts, which without permission would be illegal.

(g) "Territorial Jurisdiction of the Nation" means all "Indian country" lands as defined by federal law located within the geographical boundaries of the Seminole Nation as they existed in 1898 pursuant to the Treaty of March 21, 1866, 14 Stat. 755 entered into by the Seminole Nation and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Seminole Nation of Oklahoma shall also extend to all property located outside said boundaries owned in fee by the Seminole Nation of Oklahoma or held in trust by the United States on behalf of the Seminole Nation of Oklahoma.

(h) "Tobacco Retail Business" shall mean any entity engaging in the retail sale of tobacco products, which operates retail outlets selling cigarettes and tobacco products at established locations on a routine basis, which owns and operates cigarette machines, which sells cigarettes and tobacco products as a concession at a special event, or which otherwise engages in retail sales of cigarettes and tobacco products from time to time.

(i) "Tobacco Products" shall mean cigarettes, rolling tobacco, snuff, cigars, chewing tobacco, pipe tobacco and all forms of smokeless tobacco.

(j) "Tobacco Wholesale Business" or "Tobacco Wholesale Distributor" shall mean wholesalers, distributors, jobbers or warehousemen engaged in the sale of tobacco products or the leasing of tobacco products vending machines to a retail business for resale to consumers.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; amended by TO 92-15, November 14, 1992; definition in subsection (c) modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO**

### **SEMINOLE NATION TAX COMMISSION**

#### **Section 201. Creation and General Authority of Seminole Nation Tax Commission**

REPEALED.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; repealed by TO 92-15, November 14, 1992.]

#### **Section 202. Tax Commission Authority over Real and Personal Property Limited**

REPEALED.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; repealed by TO 92-15, November 14, 1992.]

#### **Section 203. Deposits of Revenues**

REPEALED.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; repealed by TO 92-15, November 14, 1992.]

## **CHAPTER THREE**

### **TOBACCO LICENSES, PERMITS, AND TAX**

#### **Section 301. Licenses**

The BCR Commission shall issue retail tobacco licenses upon proper application, with initial or renewal fee accompanying application, to tobacco retail businesses operating within the Nation's jurisdiction and engaging in the sale of tobacco products, provided that said businesses are owned by the Nation, owned by members of the Nation, or are businesses in which the majority interest is owned by the Nation or by members of the Nation. A license shall be issued for each location used by the retail business for sale of tobacco products.

[HISTORY: Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991; amended by TO 92-15, November 14, 1992.]

#### **Section 302. Annual Base Licensing Fee**

Retail licensees shall be required to pay a base annual licensing fee due upon submission of an application for a license and on October 1 of each fiscal year thereafter as follows:

(a) Business Owned by Members of the Nation. The base licensing fee for tobacco retail businesses owned by members of the Nation or owned by a band of the Nation, including a retail business limited to special events concession sales, shall be fifty dollars (\$50.00) per year or remainder of fiscal year, plus ten dollars (\$10.00) per year or remainder of fiscal year for each tobacco product vending machine owned or operated by said business.

(b) Business in which Majority Interest is Owned by Either the Nation or Members of the Nation. The base licensing fee for businesses in which a majority interest is owned by the Nation or by members of the Nation shall be fifty dollars (\$50.00) per year or remainder of fiscal year, plus ten dollars (\$10.00) per year or remainder of fiscal year for each tobacco product vending machine owned or operated by said businesses.

(c) Business Owned by the Nation. There shall be no base licensing fee for a tobacco retail business wholly owned or operated by the Nation, including the operation of tobacco product vending machines.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

[HISTORY NOTE: FORMER § 302 was entitled "License and Permit Requirements, and was enacted by Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991.]



### **Section 303. Variable Licensing Fee**

In addition to the base annual licensing fee, the BCR Commission may require the tobacco retail business to pay a variable licensing fee based upon purchases from wholesale businesses licensed by the Nation at a rate from zero to a rate not to exceed the following scale:

(a) Cigarettes. The maximum fee for cigarettes shall be six and three tenths cents (\$.063) per pack (\$0.63 per carton).

(b) Cigars. The maximum fee for cigars shall be five percent (5%) of the tobacco wholesale distributor's invoice price, provided that for purposes of figuring said fee, any payments in lieu of taxes which a compact requires the wholesale distributor to pay to the State of Oklahoma shall not be deemed part of said invoice price.

(c) Pipe Tobacco. The maximum fee for pipe tobacco shall be five percent (5%) of the tobacco wholesale distributor's invoice price, provided that for purposes of figuring said fee, any payments in lieu of taxes which a compact requires the tobacco wholesale distributor to pay to the State of Oklahoma shall not be deemed part of said invoice price.

(d) Chewing Tobacco. The maximum fee for chewing tobacco shall be five percent (5%) of the tobacco wholesale distributor's invoice, provided that for purposes of figuring said fee, any payments in lieu of taxes which a compact requires the tobacco wholesale distributor to pay to the State of Oklahoma shall not be deemed as part of said invoice price.

(e) Snuff. The maximum fee for snuff shall be five percent (5%) of the tobacco wholesale distributor's invoice price, provided that for purposes of figuring said fee, any payments in lieu of taxes which a compact requires the tobacco wholesale distributor to pay to the State of Oklahoma shall not be deemed part of said invoice price.

(f) Smokeless Tobacco. The maximum fee for smokeless tobacco shall be five percent (5%) of the tobacco wholesale distributor's invoice price, provided that for purposes of figuring said fee, any payments in lieu of taxes which a compact requires the tobacco wholesale distributor to pay to the State of Oklahoma shall not be deemed part of said invoice price.

(g) Other Tobacco Products. The maximum fee for other forms of tobacco products shall be five percent (5%) of the tobacco wholesale distributor's invoice price, provided that for purposes of figuring said fee, any payments in lieu of taxes which a compact requires the tobacco wholesale distributor to pay to the State of Oklahoma shall not be deemed part of said invoice price.

[HISTORY: Enacted by TO 92-15, November 14, 1992; amended by TO 2014-03, March 1, 2014.]

[HISTORY NOTE: Former § 303 was entitled "Acknowledgements by Licensees and Permit Holders," and was enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991.]

### **Section 304. Collection of Variable License Fees**

Any tobacco wholesale business that sells tobacco products to a tobacco retail business subject to the provisions of a compact shall be responsible for collection of the variable licensing fee for remission to the Commission.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

[HISTORY NOTE: Former § 304 was entitled "Noncompliance; Shop Closings, "Ordinance 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991.]

### **Section 305. License Requirements**

Licenses issued under the provisions of this Act shall:

- (a) Authorize the retail licensee to sell only those types of tobacco products that have been approved for sale by the BCR Commission pursuant to the provisions of this Act;
- (b) Require that the tobacco retail business be operated on land that is Indian country as defined by federal law;
- (c) Require that tobacco product packages sold at the business location are subject to inventory by the BCR Commission or its authorized designee, including its Director, during regular business hours or other reasonable times;
- (d) Require the licensee to display the license for that location in a prominent place;
- (e) Prohibit the transfer of the license to any other business or any other business location without written approval of the Commission;
- (f) Require that no person under the age of eighteen (18) be allowed to purchase tobacco products;
- (g) Require that persons employed in the sales of tobacco products are not less than eighteen (18) years of age;
- (h) Require that such operations and financial records and documents be maintained, as required by this Act and by regulations and rules issued by the Commission, for the purpose of insuring proper collection of licensing fees due;
- (i) Require that any lease contracts or rental agreements upon the Nation's trust lands be provided to the Commission Director for review;
- (j) Require that the retail licensee purchase tobacco products only from wholesale businesses which are licensed by the Seminole Nation of Oklahoma;

(k) Require that the retail licensee comply with provisions of all applicable compacts between the Nation and the State of Oklahoma or between the Nation and any other Indian tribe;

(l) Require that the retail license may be revoked, suspended, conditioned, terminated, or limited by the Commission for violation of any part or parts of Title 28 herein or the rules and regulations of the Commission as may be deemed appropriate to the findings;

(m) Require that the retail license may not be renewed if the licensee has received citations for violations of Title 28 herein or for violations of the Commission's rules and regulations; and

(n) Require that the retail license shall expire at 11:59 P.M. September 30 of the year of issue, unless an earlier period is so specified upon the face of the license.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

[HISTORY NOTE: Former § 305 was entitled "Prohibited Acts" and was enacted by Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991.]

### **Section 306. Acknowledgements by Retail Business Licensees**

A retail business licensee shall acknowledge that it has been provided with a copy of the license requirements contained in section 305 herein, and shall acknowledge its understanding that said requirements are conditions to its continued operations as a retail licensee.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

[HISTORY NOTE: Former § 306 was entitled "Purchase of Tobacco Products by Seminole Citizens" and was enacted by Enacted by TO 87-3, November 7, 1987; amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991.]

### **Section 307. Noncompliance: Civil Penalties: Revocation of License**

No tobacco retail business licensed by the Nation shall sell or cause to be sold any type of tobacco product in violation of any of the licensing requirements set forth in section 305 herein. Every act that violates any provision of section 305 shall constitute a separate offense each day committed, and shall be subject to a civil penalty, including revocation of license and a fine imposed by the BCR Commission pursuant to Chapter 3 of Title 3A of the Code of Laws of the Seminole Nation following notice of noncompliance and an opportunity for a hearing before the Commission.

[HISTORY: Enacted by TO 92-15, November 14, 1992.] [HISTORY

NOTE: Former § 307 was entitled "Purchase of Tobacco Products by Non-Members," and was enacted by Enacted by TO 87-3, November 7, 1987;

amended by TO 87-5, September 19, 1987; amended by TO 88-1, September 6, 1988; codified and amended by TO 91-12, November 16, 1991.]

**Section 308. Non-Licensed Tobacco Retail Business**

No tobacco retail business shall operate on Indian country within the territorial jurisdiction of the Seminole Nation without a license issued by the BCR Commission pursuant to the requirements of Title 28 herein. Any tobacco retail business in violation of this section shall be subject to appropriate enforcement action by the BCR Commission following notice of noncompliance and an opportunity for a hearing before the BCR Commission pursuant to Chapter 3 of Title 3A of the Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

**Section 309. Noncompliance: Confiscation of Inventory**

All tobacco product inventory sold in violation of any provision of Title 28 herein shall be subject to confiscation on behalf of the Nation by the Nation's Police at the retail site where said inventory is located, provided that said confiscation is ordered by the BCR Commission pursuant to applicable provisions in Chapter 3 of the Title 3A of the Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

## **CHAPTER FOUR**

### **TOBACCO PRODUCT WHOLESALE DISTRIBUTORS; SPECIAL PROVISIONS**

#### **Section 401. Licenses**

The BCR Commission is authorized to issue licenses to wholesale businesses engaged in the sale of tobacco products to retail businesses licensed by the Nation and operating within the Nation's jurisdiction, and to all tobacco wholesale businesses engaged in the distribution of tobacco products from a distribution center located on land owned by the Nation and constituting "Indian country" as defined by federal law, upon proper application with initial or renewal fee accompanying application.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 402. Base Licensing Fee**

Wholesale businesses licensed by the Nation shall be required to pay a base annual licensing fee of Fifty Dollars (\$50) per fiscal year or remainder of the fiscal year, due upon submission of an application for a license and on October 1 of each year thereafter.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 403. License Requirements**

Licenses issued under the provisions of this Act shall:

(a) Authorize the wholesale licensee to sell tobacco products to licensed tobacco retail businesses located within the territorial jurisdiction of the Seminole Nation, unless said wholesale business is owned by the Nation and operated on tribally owned Indian country lands, in which case the license shall also authorize sales to tobacco retail businesses located within the territorial boundaries of other Indian tribes in compliance with the applicable law of said Indian tribes;

(b) Require the licensee to sell only those types of tobacco products which have been approved for sale by the Commission;

(c) Require that tobacco product packages sold be inventoried for each distribution site by the wholesale licensee at the time of sale, provided that said packages shall also be subject to inventory by the BCR Commission, or the BCR Commission Director or his authorized designee during regular business hours or other reasonable times;

(d) Require that cigarettes sold by the wholesale licensee shall bear tribal and state stamps or a single stamp approved by the Nation and the State of Oklahoma, verifying that all applicable tribal licensing fees or taxes and payments in lieu of state taxes have been paid to the wholesaler at the time of purchase by the retailer;

(e) Require the wholesale licensee to file a report with the Oklahoma Tax Commission verifying monthly sales to retail licensees, and, in the case of sales by a wholesale business operated by the Nation on tribally owned Indian country lands, verifying monthly sales to tobacco retail businesses located within the territorial boundaries of other Indian tribes in compliance with the applicable law of said Indian tribes; provided that said report shall be sent, accompanied by copies of all invoices for said wholesale sales to the State of Oklahoma, in a timely manner, provided further that a copy of said report and invoices shall also be filed with the BCR Commission Director;

(f) Require that the wholesale licensee collect all payments in lieu of taxes required by a compact between the Nation and the State of Oklahoma, provided that said payments in lieu of taxes shall be collected at the time of sale to the retail business and shall be remitted to the State of Oklahoma with the monthly report required in section 403(e) herein;

(g) Require the licensee to display a copy of the license in a prominent place in all vehicles used for transportation of tobacco products, and to display a copy of the license in a prominent place at the wholesale business location in the case of a wholesale business operated on tribally owned Indian country lands;

(h) Prohibit the transfer of the license to any other business or any other business location without written approval of the Commission;

(i) Require that persons employed in the sales of tobacco products are not less than eighteen (18) years of age;

(j) Require that such operations and financial records and documents be maintained, as required by this Act and by regulations and rules issued by the BCR Commission, for the purpose of insuring proper collection of licensing fees and payments in lieu of taxes;

(k) Require that the wholesale licensee collect and remit to the BCR Commission all variable licensing fees due the Nation, provided that said collection of variable licensing fees shall occur at the time of sale to the retail business and said fees shall be remitted to the Commission no later than the fifteenth day of the month following the month for which the said fees were collected;

(l) Require that any lease contracts or rental agreements regarding land owned by the Nation and constituting Indian country as defined by federal law be provided to the BCR Commission Director for review;

(m) Require that the wholesale licensee comply with provisions of all applicable compacts between the Nation and the State of Oklahoma or the Nation and any other Indian tribe;

(n) Require that the wholesale license may be revoked, suspended, conditioned, terminated, or limited by the BCR Commission for violation of any part or parts of Title 28 herein or the rules and regulations of the Commission as may be deemed appropriate to the findings;

(o) Require that the wholesale license may not be renewed if the licensee has received citations for violations of Title 28 herein or for violations of the Commission's rules and regulations; and

(p) Require that the wholesale license shall expire at 11:59 P.M. September 30 of the year of issue, unless an earlier period is so specified upon the face of the license.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 404. Acknowledgements by Wholesale Business Licensees**

A wholesale business licensee shall acknowledge that it has been provided with a copy of the license requirements contained in section 403 herein, and shall acknowledge its understanding that said requirements are conditions to its continued operations as a wholesale licensee.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 405. Noncompliance: Civil Penalties: Revocation of License**

No tobacco wholesale business licensed by the Nation shall sell or cause to be sold any type of tobacco product in violation of any of the licensing requirements set forth in section 403 herein. Every act that violates any provision of section 403 shall constitute a separate offense each day committed, and shall be subject to a civil penalty, including revocation of license and a fine imposed by the BCR Commission pursuant to Chapter 3 of Title 3A of the Code of Laws of the Seminole Nation following notice of noncompliance and an opportunity for a hearing before the Commission.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

#### **Section 406. Non-Licensed Tobacco Wholesale Business**

A tobacco wholesale business that is not licensed by the BCR Commission pursuant to the requirements of Title 28 herein shall have no authority to sell tobacco products to a tobacco retail business operating on Indian country located within the jurisdiction of the Seminole Nation. Any tobacco wholesale business that is in violation of this section shall be subject to appropriate enforcement action by the BCR Commission following notice of noncompliance and an opportunity for a hearing before the BCR Commission pursuant to Chapter 3 of Title 3A of the Code of Laws of the Seminole Nation.

[HISTORY: Enacted by TO 92-15, November 14, 1992.]

## **CHAPTER FIVE**

### **GASOLINE AND DIESEL USAGE AND DISTRIBUTION FEE**

#### **Section 501. Gasoline and Diesel Fuel Usage and Distribution Fee**

There is hereby levied a usage and distribution fee of fourteen cents (\$0.14) per gallon upon each and every gallon of gasoline or diesel fuel sold, stored and distributed, or withdrawn from storage within the territorial jurisdiction of the Seminole Nation by the Nation or by any enterprise owned by the Nation, for use or sale by the Nation.

[HISTORY: Enacted by Law No. 94-13, September 3, 1994.]

#### **Section 502. Exemption for Tribal Use**

Gasoline and diesel fuel used exclusively for operation of vehicles owned by the Seminole Nation or by an enterprise or agency owned by the Nation shall be exempt from the fee levied pursuant to the provisions of section 501.

[HISTORY: Enacted by Law No. 94-13, September 3, 1994.]

#### **Section 503. Payment of Fee**

The Seminole Nation or any enterprise owned by the Nation shall remit on a monthly basis the fees required by section 501. Fees for each month shall be paid to the BCR Commission within ten days following the end of the month, provided that said payment is accompanied by a verified report of the net gallonage subject to the fee on a form provided by the Commission.

[HISTORY: Enacted by Law No. 94-13, September 3, 1994.]

#### **Section 504. Apportionment of Revenues**

This usage and distribution fee shall be apportioned monthly as follows:

(a) Two cents of the fourteen cents shall be deposited in a Road and Bridge Improvement Fund established by the Treasurer of the Seminole Nation to be used for road improvement projects within the Seminole Nation as approved by resolution of the General Council; and

(b) Twelve cents of the fourteen cents, together with any penalties and interest thereon, shall be deposited in the BCR Commission Revenue Account and shall be appropriated for any governmental purpose, function, program or service to members of the Nation as authorized by resolution of the General Council.

[HISTORY: Enacted by Law No. 94-13, September 3, 1994.]



**Section 505. Effective Date**

Chapter 5 of Title 28 shall become effective on one of the following dates after date of enactment by the General Council: on date of issuance of mandate of the July 29, 1994 decision of the Tenth Circuit Court of Appeals in *Chickasaw Nation v. Oklahoma Tax Commission*; or, in the event the Tenth Circuit grants a stay of the decision pending possible United States Supreme Court review, on the date the United States Supreme Court denies certiorari in the case or affirms the Tenth Circuit decision finding that the Oklahoma Tax Commission has no jurisdiction to levy state gasoline taxes against Indian tribes.

[HISTORY: Enacted by Law No. 94-13, September 3, 1994.]

## **CHAPTER SIX**

### **MOTOR VEHICLE REGISTRATION AND FEES**

#### **Section 601. Title**

This Act shall be known as the Motor Vehicle Registration Code of the Seminole Nation of Oklahoma and shall be effective March 2, 1996.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

#### **Section 602. Findings**

One of the powers essential to the maintenance of any government is the power to levy taxes. This power is an inherent attribute of tribal sovereignty, which continues unless withdrawn or limited by treaty or by act of Congress. The Seminole Nation, as a sovereign nation with the inherent power to exercise jurisdiction and regulate activities and conduct within its jurisdiction, hereby finds as follows:

(a) The Seminole Nation must strengthen tribal sovereignty, guard against the encroachment by and imposition of state jurisdiction in Indian Country, protect its citizens by regulating conduct within its jurisdiction and provide economic growth and opportunities;

(b) The future and welfare of the Seminole Nation depend on economic independence and self-sufficiency;

(c) Under the Constitution of the Seminole Nation of Oklahoma, the General Council may legislate upon matters to become the laws of the Nation to fulfill the following powers:

- (1) To promote public health, education and charity and such other services that may contribute to the social economic advancement of the members of the Seminole Nation of Oklahoma (Article V (a));
- (2) To speak or act on behalf of the Nation in all matters in which the Nation is empowered to act (Article V (f));
- (3) To exercise any powers not specifically set forth in this article which at some future date may be appropriately delegated to the General Council (Article V (i));

(d) The Seminole Nation must provide a method to regulate the registration of motor vehicles within its jurisdiction;

(e) The best interests of the Seminole Nation shall be protected by enacting laws and promulgating rules and regulations governing the registration of motor vehicles within the jurisdiction of the Seminole Nation.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 603. Purpose**

This Act is enacted to strengthen the Nation's government and to provide financing for the essential functions, operations and expenditures of the Nation's government, by regulating activities within its jurisdiction and providing fair procedures for registering and regulating motor vehicles, including the enforcement thereof and collection of all fees necessary to carry out the purposes herein.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 604. Jurisdiction**

This Act is enacted and enforceable pursuant to the inherent sovereignty of the Seminole Nation and the jurisdiction under the Constitution of the Seminole Nation. This Act does not, in any way, grant or authorize jurisdiction to a court which could not, absent tribal or federal authorization, exercise jurisdiction within the Seminole Nation.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 605. Severability**

The provisions of this Act are severable, and if any part or provision hereof shall be held void by any court of competent jurisdiction, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 606. Sovereign Immunity**

Nothing in this Act shall be construed to waive the sovereign immunity of the Seminole Nation, its officers, employees, boards, or commissions, either explicitly or implicitly.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 607. Application**

This Act shall apply to all motor vehicles owned by tribal members or their spouses.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996; amended by TO 2015-04, June 6, 2015; subsection numbering scheme

modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2017-08, July 29, 2017.]

**Section 608. Authority**

(a) Commission. This Act shall further empower the Commission, in addition to all other powers found under Title 3A, to engage in the following activities to enforce the provisions of this Act, including, but not limited to:

- (1) Promulgating rules and regulations as necessary under this Act;
- (2) Conducting appellate hearings under this Act;
- (3) Any other powers necessary for enforcement of this Act.

(b) Director. This Act shall further empower the Director, in addition to all other powers found under Title 3A, to engage in the following activities to carry out and enforce the provisions of this Act, including, but not limited to:

- (1) Reviewing, approving, or disapproving, and filing all applications under this Act;
- (2) Periodic inspections, if necessary, and any revocations, if required under this Act;
- (3) Computation of fees payable by applicants or licensees;
- (4) Depositing revenues according to Title 3A; and
- (5) Any other powers necessary to enforce the provisions of this Act.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 609. Definitions**

The following definitions are provided for the sole purpose of proper interpretation of the sections in this Chapter, and shall be determinative unless a contrary meaning is clear from the context.

- (a) “Tribe” means The Seminole Nation of Oklahoma.
- (b) “Commission” or “BCR Commission” means the Business and Corporate Regulatory Commission of the Seminole Nation of Oklahoma
- (c) “Director” means the Director of the Commission
- (d) “Registration Clerk” means the Registration Clerk of the Commission;

(e) “Motor Vehicle” means any wheeled conveyance for carrying persons or property and/or a boat/watercraft (as set forth in Section 637 herein) capable of being propelled under its own power through the use of an internal combustion engine of greater than fifty cubic centimeters displacement. Except as provided herein, farm tractors, combines, and similar self-propelled implements of husbandry (not including trucks) used exclusively for farm purposes shall not be considered a motor vehicle.

(f) “Passenger Automobile” means any motor vehicle of the car, station wagon, van, pick-up, or similar type constructed and used primarily for the transportation of persons for purposes other than for hire or compensation.

(g) “Persons” means any natural or artificial entity, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity legally competent to hold title to a motor vehicle.

(h) “Commercial Vehicle” means any motor vehicle of the car, station wagon, van, pick-up, or similar-type constructed and used primarily for the transportation of persons or goods in the ordinary course of trade or business.

(i) “Motorcycle” or “Motorized Bicycle” means any motor vehicle having either two or three wheels.

(j) “Manufactured Home” means any mobile home, house trailer, or other factory manufactured home designed for semi-permanent installation as a residence but maintaining the capability of being pulled upon highways upon wheels attached thereto.

(k) “Recreational Vehicles” means any self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes and is used solely as a family or personal convenience.

(l) “Farm Truck” means any small, light truck with an open back or box, or an SUV used for hauling and designed primarily for the carrying of property or equipment rather than people, when owned and operated by one or more farmers and used primarily for farm use, such as carrying or hauling farm commodities, property, livestock, or equipment, but not for other commercial or industrial purposes.

(m) “Tribal Law Enforcement Agency” means the Seminole Nation Tribal Law Enforcement Division or Police Department, as defined under Title 24 Police and Law Enforcement of the Seminole Nation Code of Laws.

(n) “Signature” means either the handwritten or stamped print of the authorized signer’s name;

(o) “Tribal Excise Tax” means a tax laid on the privilege to register motor vehicles under the laws of the Seminole Nation of Oklahoma.

(p) “UTV/ATV” means a utility vehicle/all-terrain vehicle, which is a small, open motor vehicle having one, two, or four seats (tandem or side by side) and three or four wheels fitted with off-road tires and designed principally for recreational use over roadless, rugged terrain.

(q) "Eligible Boat or Motor" means any boat, watercraft or motor owned by a tribal member.

(r) "Truck" shall mean a motor vehicle designed or converted primarily for carrying or hauling property or equipment, rather than people.

[HISTORY: Enacted by TO 1996-01, March 2 1996; amended by TO-1996, June 1, 1996; amended by TO 2000-141, December 2, 2000; amended by TO 2001-08, September 1, 2001; definition in subsection (m) modified on December 22, 2016 to remove reference to BIA law enforcement pursuant to authority granted by SNC Title 21, § 203; amended by TO-2017-08, July 29, 2017.]

### **Section 610. Fee Imposed on Passenger Automobiles**

(a) Fee Schedule.

Number of Years Registered	Registration Fee	Plus-Additional Fee	
1 THRU 4 YEARS	\$80.00	TRIBAL EXCISE TAX	2.0%
5 THRU 8 YEARS	\$70.00		
9 THRU 12 YEARS	\$50.00	TITLE FEE	\$10.00
13 THRU 16 YEARS	\$50.00		
17 AND OLDER	\$15.00	NOTARY FEE	\$2.00

There is hereby levied a tribal excise tax of 2.0% on all passenger vehicles first time registration with the Seminole Nation of Oklahoma and where excise taxes have not been paid to another jurisdiction.

(b) As an exception to the fee schedule contained in subsection (a) herein, Seminole Nation Tribal members who present valid documentation issued by the United States government that they are entitled to United States veterans status or active or former military status shall be exempt from payment of the tribal excise tax and shall be entitled to pay a reduced, special fee for annual registration of not more than two passenger automobiles where they are the primary registrant and their names appears on the title to the registered automobile; however, title fees will not be waived or reduced. The two exemptions from tribal excise tax as provided herein shall be allowed only twice per any twelve (12) month period. The special fee schedule for veterans or members demonstrating military status is as follows:

#### Veteran Fee:

Veterans of Foreign War; Special Fee - \$ 15.00

Disabled Veterans; Special Fee - \$ 7.00

Winners of Medals for Heroism in Combat, Bronze/Silver Star - \$ 5.00

Prisoners of War; Special Fee Waiver - \$ 0.00 (Free)

#### Active or Former Honorably Discharged Military:

Years 1-4 \$ 40.00

Years 5-12 \$ 25.00

Years 13 or more      \$ 15.00

(c) As an exception to the fee schedule contained in subsection (a) herein, Seminole Nation Tribal members who present valid documentation of a physical disability may be entitled to pay a reduced fee as set forth in the following provisions:

(i) Definitions. As used in this section:

1. “Physician” means any person holding a valid license to practice medicine and surgery, osteopathic medicine, chiropractic, podiatric medicine, or optometry, pursuant to the state licensing provisions;

2. “Physician Assistant” means any person holding a valid license as a physician assistant, pursuant to the state licensing provisions;

3. “Advanced Registered Nurse Practitioner” means any person who holds a current license as a registered nurse and a current certificate of recognition for practice as an Advanced Registered Nurse Practitioner as set forth in the state licensing provisions; and

4. “Physical Disability” means an illness, disease, injury or condition by reason of which a person:

- a. cannot walk two hundred (200) feet without stopping to rest;
- b. cannot walk without the use of or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistance device;
- c. is restricted to such an extent that the person’s forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest;
- d. must use portable oxygen;
- e. has functional limitations which are classified in severity as Class III or Class IV according to standards set by the American Heart Association;
- f. is severely limited in the person’s ability to walk due to an arthritic, neurological or orthopedic condition, or from complications due to pregnancy;
- g. is certified legally blind; or
- h. is missing one or more limbs.

(ii) The BCR Commission shall issue a detachable placard indicating physical disability to any person who submits an application on a form furnished by and/or certified by a physician, physician assistant, or advanced registered nurse practitioner attesting that the applicant has a temporary or permanent physical disability. The attestation of the physician, physician assistant, or advanced registered nurse practitioner shall denote either

“temporary” or “permanent” as the type of placard requested and shall indicate an expiration date that the physician, physician assistant, or advanced registered nurse practitioner estimates as the date of termination of such physical disability; however, if the physician, physician assistant, or advanced registered nurse practitioner certifies that the physical disability is permanent, the physician, physician assistant, or advanced registered nurse practitioner shall denote “five-year” as the placard requested. The BCR Commission shall issue a temporary physical disability placard for a special fee of Five Dollars (\$5.00) and a “five year” physical disability placard for a special fee of Twenty Dollars (\$20.00). The BCR Commission will also apply a reduced, annual registration fee of Ten Dollars (\$10.00) for a passenger automobile of a registrant that has received a five-year physical disability placard where the name of the individual who received said placard appears on the title to the registered automobile.

(iii). Any physical disability placard issued by the BCR Commission shall remain valid until:

1. The placard expires;
2. The person to whom the placard was issued requests a replacement placard; or
3. The placard is no longer needed by the person to whom the placard was issued for the disability for which the placard was originally issued, whereupon such placard shall be returned to the BCR Commission.

A five-year physical disability placard shall expire five (5) years from the last day of the month in which the placard was issued. Upon the expiration of a five-year physical disability placard, the person to whom such placard was issued may obtain a subsequent placard by reapplying to the BCR Commission in the same manner as provided in subsection (ii) of this section.

(iv) A temporary physical disability placard shall indicate the expiration date that the physician, physician assistant, or advanced registered nurse practitioner certifying the presence of a physical disability estimates as the date of termination of such physical disability, no later than six (6) months from the date of issuance, and upon which date such placard shall expire and shall be returned to the BCR Commission; provided, however, nothing in this paragraph shall be construed to prevent the holder of the placard from applying for another placard, as provided for in this section.

(v) In the event that a physical disability placard is lost or destroyed, the person to whom such placard was issued may apply in writing to the BCR Commission for a replacement placard, which the BCR Commission may issue with the same expiration date as the original placard.

(vi) A physician, physician assistant, or advanced registered nurse practitioner may sign an application certifying that a person has a physical disability, as provided in this section, only if care and treatment of the illness, disease, injury or condition causing the physical disability of such person falls within the authorized scope of practice of the physician, physician assistant or advanced registered nurse practitioner.

(vii) The BCR Commission shall have the power to formulate, adopt and promulgate rules and regulations as necessary to implement and administer the provisions of this section, including, but not limited to, prescribing the manner in which placard



recipients must display physical disability placards on a motor vehicle.

[HISTORY: Law No. 2000-141, December 2, 2000; amended by TO 2007-01, March 3, 2007; amended by TO 2007-04, June 2, 2007; amended by TO 2009-07, July 3, 2009; amended by TO 2010-11, April 30, 2011; amended by TO 2017-08, July 29, 2017.]

**Section 610-A. Apportionment for Land Acquisition**

Based upon financial availability, \$250,000.00 per year shall be reserved from the total motor vehicle revenues and deposited into a Seminole Nation Land Acquisition Fund Account which the Treasurer is directed to establish. Should the BCR Commission determine that motor vehicle revenues do not support the funding of the Land Acquisition Fund, the BCR Commission may request an annual Tribal Resolution from the Seminole Nation General Council to suspend this funding requirement.

[HISTORY: Enacted by TO 2007-01, March 3, 2007; amended by TO 2009-07, July 3, 2009.]

**Section 611. Fee Imposed on Farm Trucks**

(a) The license fee for each farm truck or truck-tractor owned and operated by one or more farmers and used primarily for farm use, such as carrying or hauling farm commodities, property, livestock, or equipment, and not for commercial or industrial purposes, shall be Twenty Dollars (\$20.00).

(b) The fees assessed pursuant to this section shall not apply to trailers or semitrailers or combinations thereof used primarily for farm use and for the transportation of products of the farm by the producer thereof. Such fee shall not apply to any trailer or semitrailer or combinations thereof when used primarily for the transportation of any article or articles owned by the operator of the trailer or semitrailer or combinations thereof and not used in the furtherance of or incident to any commercial or industrial enterprise. The provisions of Section 612 of this Title shall apply to any trailers or semitrailers when used primarily for the transportation of logs, ties, stave bolts and posts, directly from forest to sawmill.

(c) For the purpose of this section, a trailer or semitrailer or combination thereof owned by a farmer and used primarily for the purpose of transporting farm products to market or for the purpose of transporting to the farm material or things to be used thereon, and not for commercial or industrial purposes, may be registered for One Dollar (\$1.00); provided, any such trailer used in the furtherance of or incident to any other commercial or industrial enterprise, must be licensed as such paying the license fees provided in Section 612 of this Title.

(d) Before a party shall be allowed to purchase a license plate or claim an exception or exemption under this section, the party shall:

1. Provide an affidavit stating under oath that the motor vehicle the party wishes to register as a farm truck or truck-tractor under this section is used primarily for farm use, such as carrying or hauling farm commodities, property, livestock, or equipment, not for other commercial

or industrial purposes; and

2. Present either an income tax Schedule F for the preceding year or a valid exemption card issued by the Seminole Nation or the State of Oklahoma.

A violation of this section shall be grounds for revocation of the person's registration and tag. Any person who signs the affidavit as required by this section when the person does not believe that the information in the affidavit is true or knows it is not true, upon conviction, shall be guilty of perjury and shall be punished as provided for by law.

(e) Any person owning a truck upon which the farm truck license fee has been paid for the current year and whose truck may be needed during grain harvests or other seasonal farming activities for hauling farm products other than his or her own, or for hauling gravel, shale or other road materials for rural roads, may make application with the BCR Commission for a short-term commercial license for such truck for a period of time not to exceed ninety (90) days as provided for in subsection (f) of this section.

(f) Upon such application, the BCR Commission may issue a temporary commercial truck license and register the truck upon payment of the following fees;

1. For thirty (30) days, a fee equal to one-eighth (1/8) of the annual commercial license fee required for such truck.

2. For sixty (60) days, a fee equal to one-fourth (1/4) of the annual commercial license fee required for such truck.

3. For ninety (90) days, a fee equal to three-eighths of the annual commercial license fee required for such truck.

(g) The provisions of this section shall not apply to the transportation of persons or property for hire.

[HISTORY: Enacted by TO 2017-08, July 29, 2017.]

## **Section 612. Fee Imposed on Commercial Vehicles**

(a) The following license fees shall be paid annually to the BCR Commission, as applicable, upon the registration of the following vehicles:

Except as provided in this subsection, for each commercial vehicle over eight thousand (8,000) pounds, the license fee shall be based on the combined laden weight of the vehicle or combination of vehicles. The license fees shall be computed and assessed at the following rates:

- |  |          |
|--|----------|
| 1. From 8,001 pounds to 15,000 pounds  | \$ 50.00 |
| 2. From 15,001 pounds to 18,000 pounds | 75.00    |
| 3. From 18,001 pounds to 21,000 pounds | 100.00   |
| 4. From 21,001 pounds to 24,000 pounds | 125.00   |
| 5. From 24,001 pounds to 27,000 pounds | 150.00   |

6. From 27,001 pounds to 30,000 pounds	175.00
7. From 30,001 pounds to 33,000 pounds	200.00
8. From 33,001 pounds to 36,000 pounds	225.00
9. From 36,001 pounds to 39,000 pounds	250.00
10. From 39,001 pounds to 42,000 pounds	275.00
11. From 42,001 pounds to 45,000 pounds	300.00
12. From 45,001 pounds to 48,000 pounds	325.00
13. From 48,001 pounds to 51,000 pounds	350.00
14. From 51,001 pounds to 54,000 pounds	375.00
15. From 54,001 pounds to 57,000 pounds	400.00
16. From 57,001 pounds to 60,000 pounds	425.00
17. From 60,001 pounds to 63,000 pounds	450.00
18. From 63,001 pounds to 66,000 pounds	475.00
19. From 66,001 pounds to 69,000 pounds	500.00
20. From 69,001 pounds to 72,000 pounds	525.00
21. From 72,001 pounds to 73,280 pounds	550.00
22. From 73,281 pounds to 74,000 pounds	575.00
23. From 74,001 pounds to 75,000 pounds	600.00
24. From 75,001 pounds to 76,000 pounds	625.00
25. From 76,001 pounds to 77,000 pounds	650.00
26. From 77,001 pounds to 78,000 pounds	675.00
27. From 78,001 pounds to 79,000 pounds	700.00
28. From 79,001 pounds to 80,000 pounds	725.00
29. From 80,001 pounds to 81,000 pounds	750.00
30. From 81,001 pounds to 82,000 pounds	775.00
31. From 82,001 pounds to 83,000 pounds	800.00
32. From 83,001 pounds to 84,000 pounds	825.00
33. From 84,001 pounds to 85,000 pounds	850.00
34. From 85,001 pounds to 86,000 pounds	875.00
35. From 86,001 pounds to 87,000 pounds	900.00
36. From 87,001 pounds to 88,000 pounds	925.00
37. From 88,001 pounds to 89,000 pounds	950.00
38. From 89,001 pounds to 90,000 pounds	975.00

For the purposes of this section, the license fee of a wrecker or tow vehicle shall be based on the gross weight of the wrecker or tow vehicle alone without any inclusion of weight for a vehicle towed by the wrecker or tow vehicles.

(b) After the fifth year's registration with the Seminole Nation or in any other state, the license fee upon any truck registered on a basis of the combined laden weight not in excess of fifteen thousand (15,000) pounds shall be assessed at fifty percent (50%) of the fee computed and assessed for each of the first five (5) years. On the seventh and all subsequent years of registration in this or any other state, on such truck, such license fees shall be assessed and computed at fifty percent (50%) of the amount due on the sixth year's registration. In no event shall such annual license fee on any truck be less than Ten Dollars (\$10.00), nor shall the annual license fee of any truck-tractor be less than Fifty Dollar (\$50.00).

(c) In addition to the fees required by subsection (a) of this section, there shall be paid a registration fee of Twenty Dollars (\$20.00) upon the first registration with the Seminole Nation and upon transfer of ownership of any frac tank, construction machinery, rental trailer, commercial trailer or semitrailer designed to be pulled and usually pulled by a truck or truck-tractor. Thereafter, a fee of Four Dollars (\$4.00) shall be paid annually for each frac tank, construction machinery, rental trailer, commercial trailer or semitrailer. The fee of Four Dollars (\$4.00) shall be due and payable on January 1 of each year on any frac tank, construction machinery, rental trailer, commercial trailer or semitrailer registered under this section. Upon the payment of the registration fee of Twenty Dollars (\$20.00), a non-expiring registration certificate and identification plate shall be issued for each frac tank, construction machinery, rental trailer, commercial trailer or semitrailer. The non-expiring identification plate shall remain displayed on the frac tank, construction machinery, rental trailer, commercial trailer or semitrailer for which the identification plate is issued until such frac tank, construction machinery, trailer or semitrailer is sold or removed from service. A receipt shall be issued upon the payment of the annual fee. The receipt shall show the total fee paid for one or more frac tanks, construction machinery units, rental trailers, commercial trailers or semitrailers. The receipt shall be retained by the owner of any frac tank, construction machinery, rental trailer, commercial trailer or semitrailer for a period three (3) years and shall be subject to audit by the BCR Commission. Any frac tank, construction machinery, commercial trailer or semitrailer licensed pursuant to this section shall not be permitted to be operated on the highways within the jurisdiction of the Nation when such frac tank, construction machinery, commercial trailer or semitrailer is being operated by a tribal member, or is being operated by a person operating a vehicle or vehicles within the jurisdiction of the Nation and required by law to be licensed, unless the pulling truck or truck-tractor has been licensed pursuant to this section or is twenty-four thousand (24,000) pounds or less and operating under a valid temporary license plate. In no event shall any truck, truck-tractor, frac tank, construction machinery, trailer, or semitrailer used in the furtherance of any commercial enterprise be permitted to operate on the roadways of the Nation or permitted to register at a smaller license fee than that prescribed in this section except as provided in this section.

(d) If any vehicle is used for a purpose other than that for which it has been registered, the owner of the vehicle shall be required to immediately reregister the vehicle at the appropriate rate. If any vehicle is placed or operated upon any street, road or highway with a laden weight in excess of that for which it is licensed, the license fee for such increased laden weight shall become due, and the owner of the vehicle shall be required to immediately reregister the vehicle at the increased rate. Provided that, in either event there shall be credited upon the increased license fee for such reregistration for any portion of the year or period remaining after the change in use or increase in laden weight shall have occurred a proportionate part of the license fees previously paid. If this reregistration is made voluntarily by the owner, the ratable proportion of the credit allowed shall be determined as of the date the reregistration is voluntarily made. If the reregistration is not voluntarily made but occurs as a result of the discovery by any enforcement officer of an improper operation of the vehicle that shall be considered prima facie evidence that it has been improperly registered for the entire portion of the year covered by the improper registration. Provided further that the ratable credit shall be allowed only on the first reregistration of any vehicle during any calendar year. If, during the calendar year, subsequent changes of license plate are desired, the ratable credit shall not be allowed but the owner of the vehicle shall be required to pay the license fee due for that portion of the calendar year remaining without benefit of any additional credits. No owner of a motor vehicle shall possess at any time more than one license plate for any vehicle owned by such person. No reregistration shall be made until the current license plate previously issued has been surrendered.

Any person who has paid a fee under the terms and provisions of this subsection may at any time within one (1) year after the payment of such fee file with the BCR Commission a claim under oath for refund stating the grounds therefor. However, the BCR Commission shall allow refunds only where the amount of tax paid has been erroneously computed or determined through clerical errors or miscalculations. No refund shall be allowed by the BCR Commission of a tax paid by the person where such payment is made through a mistake as to the legal misinterpretation or construction of the provisions of this section. Any refunds made by the BCR Commission pursuant to this subsection shall be made out of any monies collected pursuant to this subsection which have not been apportioned.

(e) The annual license fee required by this section is intended to cover only the motor vehicle for which it is issued. The BCR Commission, upon application when a licensed truck-tractor has been destroyed by fire or accident, shall credit the unused portion of the annual license fee of the vehicle toward the license fee of a replacement vehicle of equal registered weight. The amount of credit shall not exceed the license fee due on the replacement vehicle. The BCR Commission shall not be required to make a refund. If the replacement vehicle is to be registered at a greater weight, the applicant shall pay an additional sum equivalent to the difference between the unused portion of the annual license fee for the original motor vehicle and the license fee due for the replacement motor vehicle.

(f) The license fees provided for in this section shall be paid each year whether or not the vehicle is operated on the public highway.

(g) Notwithstanding the provision of any other law or regulation in respect to the time for payment of license fees on motor vehicles, if the total amount of the annual license fees due from any tribal member owner, either individual, partnership, LLC or corporation, upon the registration, on or before January 15 of any year, of commercial trucks, truck-tractors, frac tanks, construction machinery, trailers or semitrailers exceeds the sum of Five Hundred Dollars (\$500.00), the license fees may be paid in equal, semiannual installments. The first installment shall be paid at the time of the application for registration of the vehicles and not later than January 15 of each year, and the second installment shall be paid on or before the first day of July of such year.

This subsection shall not operate to reduce the amount of the license fees due. If any installment is not paid on or before the date due, all unpaid installments of license fees for such year on each vehicle shall be deemed delinquent and immediately due and payable, and there shall be added a penalty of twenty-five cents (\$0.25) per day to the balance of the license fee due on each vehicle for each day the balance remains unpaid up to thirty (30) days, after which the penalty due on each vehicle shall be Twenty-five Dollars (\$25.00). The penalty for vehicles registered by weight in excess of eight thousand (8,000) pounds shall be an amount equal to the license fee. On and after the thirtieth day each such vehicle involved shall be considered as improperly licensed and as not currently registered, and all of the provisions of this Code and the laws of the Seminole Nation relating to enforcement, including the provisions for the seizure and sale of vehicles not registered and not displaying current license places, shall apply to the vehicles.

All fees and taxes levied by the BCR Commission under this Code shall become and remain a first lien upon the vehicle upon which the fees or taxes are due until paid. The lien shall have priority to

all other liens. No title to any vehicle may be transferred until the unpaid balance on the vehicle has been paid in full. Provided that any unpaid balance of the license fees shall remain and become a lien against any and all property of the owner, both real and personal for so long as any license tag fee balance shall remain unpaid. Any unpaid balance under these provisions shall be immediately due and payable by the owner if any vehicle is sold, wrecked, or otherwise retired from service.

Any person electing to pay license fees on a semiannual installment basis, as herein authorized, shall be required to purchase a new license tag for the last half and shall pay the sum of Four Dollars (\$4.00) for each tag to cover the costs of the license tags. The license tags for each half shall be plainly marked in designating the half for which they were issued. A validation sticker may be used in lieu of a metal tag where appropriate. Such license tag fee shall be, in addition to the license fees or any other fees, collected on each application as provided by statute and shall be apportioned according to the provisions of this Chapter 6.

(h) In addition to any other penalties prescribed by law, the following penalty shall be imposed by enforcement officers upon any owner or operator of a commercial vehicle registered under the provisions of this section when the laden weight or combined laden weight of such vehicle is found to be in excess of that for which registered. The penalty shall be imposed each and every time a vehicle is found to be in violation of the registered laden weight or combined laden weight. The penalty shall be not less than Twenty Dollars (\$20.00) when such vehicle exceeds the laden weight or combined laden weight by two thousand one (2,001) pounds; thereafter, an additional penalty of not less than Twenty Dollars (\$20.00) shall be imposed for each additional one thousand (1,000) pounds or fraction thereof of weight in excess of the registered laden weight or combined laden weight. Such penalty shall not exceed the amount established by the BCR Commission pursuant to the provisions of Chapter 6.

[HISTORY: Enacted by TO 2017-08, July 29, 2017.]

**Section 613. Fee on Motorcycles, Motorized Bicycles, and Utility Vehicles/All-Terrain Vehicles**

There is hereby levied an annual registration fee on every motorcycle, motorized bicycle and utility vehicle/all-terrain vehicle ("UTV/ATV") in the amount of ten dollars (\$10.00).

[HISTORY: Quarterly Meeting, June 1997; amended by TO 2017-08, July 29, 2017.]

**Section 614. Fee on Recreational Vehicles, Motor Homes, Manufactured Homes, and Other Trailers**

There is hereby levied an annual registration fee on every recreational vehicle, motor home, manufactured home, and any other type of trailer. This annual registration fee shall equal one-half (1/2) of the amount of the fee imposed by Section 610 according to the year of registration of the vehicle or trailer in this, or any other jurisdiction; provided that, at the option of the owner, the BCR Commission is authorized to register boat trailers and utility-type trailers, which are not being utilized in a commercial capacity, on an annual basis for a fee of One Dollar (\$1.00).

There is also hereby levied a tribal excise tax on every such vehicle or trailer equal to one percent

(1%) of the factory-delivered price of such vehicle or trailer.

[HISTORY: Enacted by TO 1996-01, March 2, 1996; amended by TO 1996-02, June 1, 1996;  
amended by TO 2017-08, July 29, 2017.]

**Section 615. Collector's Tags**

As obsolete tags do have a value as collector's items, the sale of such tags is hereby authorized according to Commission regulation. Each tag will be labeled with a decal stating Collector and a Certificate of charges. The tag shall be recorded by the Commission as obsolete and reported to the Tribal Law Enforcement Agency as obsolete.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 616. Certificates of Title**

Prior to initial registration of a motor vehicle, the owner shall apply to the Commission for a title for said vehicle on such form as the Commission shall by rule direct. Prior to issuance of a title for a motor vehicle, the Commission shall require the applicant to furnish proof of purchase from a bona-fide new or used car dealer, or a properly endorsed Vehicle Certificate of Title issued by this or some other jurisdiction. Notice of liens against said vehicle shall be placed upon said title upon request of the lending institution.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 617. Form of a Vehicle Certificate To Title**

The title issued shall be printed on safety paper and be in substantially the following form on the face of the title:

SEMINOLE NATION OF OKLAHOMA VEHICLE CERTIFICATE OF TITLE			
Body	Type	Model Year	Vehicle Identification Number
	Title Number		
<hr/>			
Make	Date of Loss	Date Issued	Factory Delivery Price
<hr/>			
Model	Carrying Capacity	Date First Sold	Total Delivered Price
<hr/>			

Liens:

Date                      Time                      Name                      Address City,  
State, Zip

1st

---

2nd

---

Tag Number                      Owner Name:  
Initial Decal No.

---

Previous Title:

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Jurisdiction

---

Title Number \_\_\_\_\_

I hereby certify that according to the records of the Business and Corporate Regulatory Commission of the Seminole Nation of Oklahoma, the person named above is the owner of the vehicle described above. No certification is made that lien information contained hereon is accurate or correct.

Business and Corporate Regulatory Commission

By: \_\_\_\_\_  
Name and Title

[Seal]

(Keep this certificate in a safe place. DO NOT accept a certificate showing any erasure, alteration, or mutilation.)

And on the reverse side of said certificate:

#### IMPORTANT NOTICE

Every person who is not a licensed dealer in used cars is required to apply for a transfer title within twenty days after acquiring ownership or possession of this vehicle. Failure to do so may subject the owner or possessor to a civil penalty.

Any assignment must be signed and sworn to before a notary public. The previous year's



Registration Certificate should accompany this title.

### ASSIGNMENT OF TITLE

For value received I/we hereby sell, assign, convey, and transfer unto:

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

The vehicle described on the reverse side of this certificate, warrant the title to the same, and certify that at the time of delivery the vehicle is subject to the following liens or encumbrances and none other:

Date: \_\_\_\_\_ Amount(s): \_\_\_\_\_

In Favor of: \_\_\_\_\_

Address: \_\_\_\_\_

This vehicle (has) (has not) been involved in a casualty or loss. The registration decal number for this vehicle is: \_\_\_\_\_, Year-\_\_\_\_\_.

\_\_\_\_\_  
Signature of Seller

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, Year-\_\_\_\_\_.

[Seal]

\_\_\_\_\_  
Notary Public

My commission Expires: \_\_\_\_\_

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### RE-ASSIGNMENT BY LICENSED USED CAR OR PARTS DEALER ONLY

For value received I/we hereby sell, assign, convey, and transfer unto:

Full Name (s): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

The vehicle described on the reverse side of this certificate, warrant the title to the same, and certify that at the time of delivery the vehicle is subject to the following liens or encumbrances and none

other:

Date: \_\_\_\_\_ Amount(s): \_\_\_\_\_

In Favor of: \_\_\_\_\_

Address: \_\_\_\_\_

This vehicle (has) (has not) been involved in a casualty or loss. The registration decal number for this vehicle is: \_\_\_\_\_, Year-\_\_\_\_\_.

\_\_\_\_\_  
Signature of Licensed USED Car Dealer

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, Year-\_\_\_\_\_.

[Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 618. Title Fees**

The Commission shall charge a fee of \$10.00 for the issuance of any original or transfer title, and a fee of \$ 5.00 for the issuance of any duplicate title. A receipt shall be given for said fees.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 619. Application for Title and Registration**

- (a) To apply for a motor vehicle title and registration, the applicant shall:
- (1) Surrender a verification of security form or equivalent proof of liability insurance coverage to the Fee Clerk.
  - (2) Surrender current title and registration, or certificate of origin unless the vehicle is currently titled and registered with the Tribe in which event the Tribal title and current registration shall be shown to the Fee Clerk for verification.
  - (3) Execute or submit a previously executed certificate or affidavit stating the applicant owns the motor vehicle, and applicant is eligible to receive a Tribal tag.
  - (4) If any lien appears on the previous title or registration and the applicant

wishes to have the lien information removed, the applicant must surrender to the Fee Clerk an original copy of a Release of Lien executed by the lending institution.

(b) Fee Clerk Issuance of Title and Registration. If the documentation surrendered to the Fee Clerk appears to be in order, after inspection by the Fee Clerk, the Fee Clerk shall:

- (1) Prepare a new title for issuance to the applicant, if necessary. A new title is only necessary if the current title to the vehicle is not a title issued by the Tribe, or if any information contained upon a current title issued by the Tribe is inaccurate.
- (2) Prepare and have applicant execute an Application for Registration Form, in triplicate.
- (3) Prepare a new Certificate of Registration for the ensuing year.
- (4) Verify with the applicant that all information on the Title and Certificate of Registration is correct.
- (5) Calculate all required fees and fill out the receipt form provided.
- (6) Give the applicant the completed but unsigned receipt and direct the applicant to the Commission Office to pay for the title, tag, and other required fees.
- (7) Upon return of the applicant with a receipt marked "Paid" by the Commission office, the Fee Clerk shall issue the necessary documents, tags and decals to the applicant. The Fee Clerk shall keep a copy of the receipt for Commission records.
- (8) The Fee Clerk should forward a copy of the Motor Vehicle Registration and, if a new or corrected title has been issued, one copy of the Motor Vehicle Title to the Tribal Law Enforcement Agency for the law enforcement records.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

#### **Section 620. Registration Certificate and Tags**

Upon compliance with the provisions of this Chapter, payment of the annual registration fee, presentation of the vehicle title and previous year's registration certificate for inspection, and inspection of the vehicle identification number affixed by the manufacturer to the vehicle, the Commission shall issue a Registration Certificate, and a tag or decal to be placed upon the registered vehicle.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 621. Authorized signature for Registrations and Titles**

The following are hereby specifically authorized to sign and authenticate Motor Vehicle Certificates of Registration and Certificates of Title:

- (a) The Director; or
- (b) The Fee Clerk

If an applied for Certificate of Registration or Certificate or Title is properly signed or authenticated by an authorized person, the Certificate of Registration or Certificate of Title is valid even though after such signing or authentication, but before delivery of said documents, the person signing or authenticating same becomes no longer authorized to sign or authenticate such document at the actual date of delivery thereof.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 622. Duplicate Registrations**

The Commission shall charge a fee of \$ 5.00 for the issuance of any duplicate registration.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 623. Duplicate Titles**

Duplicate titles shall not be issued except as authorized by this section and according to such further rules concerning issuance as the Commission may prescribe. A duplicate title shall be issued only after the applicant has executed a sworn statement that the original or transfer title issued to him was lost, stolen or mutilated, and that the applicant has not sold or otherwise disposed of the vehicle. If the previous title was mutilated, the owner shall surrender the mutilated title to the Fee Clerk or satisfactorily explain why it is no longer in his possession. Before any duplicate title is issued, the Fee Clerk shall physically inspect the vehicle identification number affixed to the vehicle for which such duplicate title will be issued to verify the vehicle is still in the applicant's possession and that the vehicle is the same vehicle registered and titled by the Commission. A duplicate title may not be issued except directly and physically to the person who is the owner of record according to the records of the Commission and the Fee Clerk shall require that proper identification be exhibited.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 624. Duplicate Tag and Decal**

If a tribal tag or decal is lost, stolen or damaged beyond reasonable use, the person to whom the same was issued may obtain a duplicate or replacement thereof upon furnishing proof satisfactory to the Commission that such tag or decal has been lost, stolen or damaged beyond reasonable use,

and upon payment of the required fee, provided that the applicant will pay the cost incurred to verify the eligibility of the applicant to receive such duplicate or replacement tag or decal. The cost of such tag shall be \$ 5.00 and the cost of such decal shall be \$ 2.50.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

#### **Section 625. Additional Information Required**

In addition to other information required by the application for Motor Vehicle Registration, the applicant shall provide:

- (a) A written certificate or sworn statement verifying ownership of the vehicle.
- (b) A written certificate or sworn statement that the applicant is eligible for such registration as set forth in this Chapter.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

#### **Section 626. Motor Vehicle Title Numbers**

Each title shall bear a number composed of numbers, letters or a combination thereof, and no two prefixes shall have the same number.

(a) Prefixes. A title shall contain a prefix labeled or otherwise identified according to this subsection:

- (1) An original title shall be issued to the first purchaser of vehicle from a new car dealer. Original title numbers shall contain the prefix OT--.
- (2) A transfer title shall be issued to a second or subsequent owner of a vehicle whether purchased from an individual or a dealer. Transfer titles shall contain the prefix TT--.
- (3) A duplicate title shall be the title issued to the owner of record to replace a lost, stolen, or mutilated original or transfer title. Duplicate title numbers shall contain the prefix DT--. Duplicate titles shall be issued by the Commission according to section 623 of this Chapter and such further rules concerning proof of ownership as the Commission may prescribe.

(b) Suffixes. A title shall contain a suffix labeled or otherwise identified according to this subsection:

- (1) If the vehicle is owned by the Tribe or any of its agencies, the suffix shall be -TG.
- (2) If the vehicle is owned by a member of the Tribe, the suffix shall be -TM

(c) Main Numbers. Between the prefix and suffix herein provided for, the Fee Clerk shall assign each title a unique main number consisting of seven digits, which shall commence with the last two numbers of the current calendar year in which the title was issued, followed by a dash and then five numbers commencing with the number 1 and continuing consecutively so that no two titles shall ever have exactly the same number. (A duplicate title shall have the same number and suffix as the title which it duplicates but the prefix will be different.)

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 627. Form of Registration Certificate**

The Registration Certificate shall be in substantially the following form:

SEMINOLE NATION OF OKLAHOMA CERTIFICATE OF MOTOR VEHICLE  
REGISTRATION

Body	Type	Model Year	Vehicle Identification Number	
Make	FacDelPrice			
Class	Title Number	Reg. Date		
No. Yrs. Reg.				
Fee Exempt? _____				
Model	Registration Expires	Unladen W'T.	Load Carried	
Carrying Capacity				
Owner's Name: _____				
Address: _____				
City/State/Zip: _____				
Previous Registration: Tag Number: _____		Decal Number: _____		
Jurisdiction: _____				
Current Registration: Tag Number: _____		Decal Number: _____		
Fee: \$ _____		Penalty: \$ _____		Total Fee: \$ _____

I hereby certify that according to the records of the Business and Corporate Regulatory Commission of the Seminole Nation of Oklahoma, the person named above is the owner of the vehicle described above and that all fees upon such vehicle have been duly paid for the period and in the amount indicated.

[Seal]

Business and Corporate Regulatory Commission

By: \_\_\_\_\_ Name  
and Title

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

**Section 628. Form of Tags**

Each vehicle registered shall be issued a tag to be properly displayed on the rear of said vehicle. The tag shall remain with the vehicle for a period of five years, and shall be in such form as the Commission shall prescribe within the following rules:

(a) Each tag shall be made of metal, predominately using the colors red, blue and black. Other colors may be used by determination of the Commission.

(b) Each tag shall bear the name "Seminole Nation."

(c) Each tag shall contain a distinctive and unique combination of numbers and letters centered thereon, tag shall begin with design of the turtle.

(d) The identifying symbols shall be large and clear enough to be read by the unaided eye at a distance of not less than fifty feet.

(e) Each tag shall provide a space for the placement of a monthly and yearly decal as may be required.

(f) The tags for each class of vehicles shall be distinctive and different from those assigned to other classes of vehicles.

(g) The tags issued to tribally owned vehicles may contain the suffix –EX.

(h) The Commission may, in its discretion provide by rule for special symbols or legends to be placed upon passenger automobile tags issued to:

(1) The physically handicapped;

(2) Veterans of the armed forces;

- (3) Winners of selected medals for heroism in combat;
- (4) Past or present prisoners of war;
- (5) Parents whose child has been killed while in the armed forces;
- (6) Past or present elected tribal officials; and
- (7) Such other class or classes of persons entitled to identification or honor by the public.

Provided, that before issuing any such tag, the Commission shall require documentation that the owner of the vehicle is entitled thereto.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996; amended by TO 2001-08, September 1, 2001.]

#### **Section 629. Personalized Tags**

The Commission is authorized, in its discretion and pursuant to such rules as it may establish, to provide a personalized tag upon the owner's request for any passenger automobile that has been properly registered and tagged pursuant to this act. Such personalized tag may then be placed upon said vehicle in lieu of the regular tag decals issued by the Commission. The Commission may charge such additional fees for such personalized tags and decals as may be necessary to defray the cost of production and administration of said tags. All other laws, rules and regulations pertaining to motor vehicles and the operation thereof within the Seminole Nation jurisdiction shall still continue to apply.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

#### **Section 630. Form of Decals**

(a) Each year that a vehicle is registered pursuant to this Chapter, the Commission shall issue a decal to be placed upon the tag affixed to the registered vehicle. The decal(s) shall bear an abbreviation or numerical representation of the month of expiration of the vehicle registration, and the last two digits of the year of expiration. Decals shall bear the decal identification number. The decals shall be color coded according to the expiration date and shall be made in such a way that it is impossible to remove them from a tag without destroying them.

(b) The Commission may issue a single decal in order to meet the requirements of subsection (a) above.

(c) The Commission may issue an additional decal upon proof of destruction of a previously issued decal and according to section 624 of this Chapter and any other rule or regulation promulgated by the Commission.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June



1, 1996.]

**Section 631. Other Requirements for Motor Vehicles**

(a) Every operator of a motor vehicle upon the public streets, roadways or highways within the Seminole Nation jurisdiction shall have in their possession a currently valid state driver's license and shall exhibit such license to any law enforcement officer upon request.

(b) Every owner of a motor vehicle operated upon the public streets, roadways, or highways shall maintain, with some insurance company or surety company authorized to do business in the State of Oklahoma, or approved for this purpose by the Commission, a liability insurance policy or bond, to cover any liability for an accident involving such motor vehicle, to a limit, exclusive of interests and cost of:

- (1) Not less than ten thousand dollars because of bodily injury to or death of any one person in any one accident, and
- (2) Not less than twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and
- (3) Not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

This requirement shall not apply to any owner if the operator of such vehicle has such insurance which covers the operator while operating the vehicle.

(c) Every operator of a motor vehicle operated upon the public street, roadways, or highways shall maintain with some insurance company or surety company authorized to do business in the State of Oklahoma, or approved for this purpose by the Commission, a liability insurance policy or bond, to cover any liability for an accident involving such motor vehicle, to a limit, exclusive of interests and cost of:

- (1) Not less than ten thousand dollars because of bodily injury to or death of any one person in any one accident,
- (2) Not less than twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and
- (3) Not less than ten thousand dollars because of injury to or destruction of property of others in any one accident. This requirement shall not apply to any operator if the owner of such vehicle has such insurance which covers the operator while operating the vehicle.

(d) On and after the date of enactment of this section:

- (1) The owner of a motor vehicle registered with the Seminole Nation shall carry in such vehicle at all times a current owner's security verification form listing the vehicle which has been issued by a bona-fide insurance company registered to do business within Oklahoma, and shall produce such form upon request for inspection by any law enforcement officer or

representative of the Commission and, in case of a collision, the form shall be shown upon request to any person affected by said collision.

- (2) Every person registering a motor vehicle with the Seminole Nation, except a motor vehicle which is not being used upon the public highways or public streets, at the time of registration of such vehicle, shall certify the existence of security with respect to such vehicle by surrendering to the Commission or other registering agency a current owner's security verification form or an equivalent form issued by a bona-fide insurance company registered to do business in the State of Oklahoma. The Commission or other registering agency shall require the surrender of such form prior to processing an application for registration or renewal.
- (3) The following shall not be required to carry an owner's or operator's security verification form or an equivalent form during operation of the vehicle and shall not be required to surrender such form for vehicle registration purposes:
  - (A) Any vehicle owned or leased by the federal, state or tribal government, or agency or political subdivision thereof,
  - (B) Any vehicle bearing the name, symbol, or logo of a business, corporation or utility on the exterior and which is in compliance with the provisions of sections 7-600 through 7-607 of Title 47 of the Oklahoma Statutes according to records of the Oklahoma Department of Public Safety which reflect a deposit, bond, self-insurance, or fleet policy, on file with such Department of the State of Oklahoma,
  - (C) Any vehicle authorized for operations, pursuant to a permit number issued by the Interstate Commerce Commission, or the Oklahoma Corporation Commission,
  - (D) Any licensed taxicab, and
  - (E) Any vehicle owned by a licensed used motor vehicle dealer and not regularly used upon the public highways.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 632. Tribally-Owned Vehicles**

The Commission shall issue, without charge, appropriate titles, certificates of registration, tags, and decals for any motor vehicle owned by the Seminole Nation of Oklahoma or its agencies. Title to all such vehicles shall be in the name of the Seminole Nation of Oklahoma and such vehicles may be disposed of only with the approval of the General Council. If the particular agency has been authorized to purchase and dispose of property in the name of the agency by the General

Council of the Tribe, the agency may hold title to a vehicle purchased through an authorized budget line item in its own name, and dispose of the vehicle pursuant to its authorized powers, unless the purchase was made from appropriated tribal funds. If the purchase was made with appropriated tribal funds, the General Council must concur by resolution in the sale of any such vehicle.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 633. Penalties**

(a) Every person who registers a motor vehicle with the Seminole Nation pursuant to this code shall renew their motor vehicle registration and tags within (30) thirty days of the expiration of the motor vehicle tag or registration. The date of delinquency for renewing motor vehicle registration and tags shall be (30) thirty days following expiration of the same.

Every person who transfers a registration and/or title of a motor vehicle to the Seminole Nation pursuant to this Code shall register and/or title such motor vehicle and tag such vehicle within the (30) thirty-day expiration date of the State or other Tribal Nation. The date of delinquency for transferring a motor vehicle registration/tag and/or title shall be (30) thirty days following expiration of the registration and/or tag.

(b) Any person failing or refusing to pay the fee as herein provided on or before date of delinquency shall pay in addition to the fee a penalty of twenty-five cents (\$0.25) per day for each day of delinquency.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996; amended by TO 2017-08, July 29, 2017.]

### **Section 634. Recognition of Foreign Titles and Registration**

It shall not be unlawful by reason of this Chapter for any person to possess or operate a motor vehicle within the jurisdiction of the Seminole Nation of Oklahoma so long as the vehicle is properly registered and tagged by the jurisdiction in which such person resides or in which the vehicle is principally garaged, and such jurisdiction extends like or similar recognition to the vehicle tags, certificates of title, and registration issued by the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 635. Appeals**

(a) Disapproval of Application

(1) If the Director, or his authorized designee, shall disapprove any application under this Act, the Director, or his authorized designee, shall, within thirty (30) days of application, give written notice by certified mail, return receipt requested, of such disapproval to the applicant.

(2) Such disapproval shall specify the reasons for the disapproval and inform

the applicant of appeal rights and procedures.

- (3) Within ten (10) days of the receipt of such disapproval, such applicant may appeal to the Commission by filing a formal written request for hearing by the Commission, according to such regulation promulgated by the Commission, and shall submit with the request a copy of the application and written disapproval. The applicant may submit any other documentation with the request for the Commission to consider.

(b) Failure to approve application

- (1) If, after thirty-five (35) days after the date of application, the Director, or his authorized designee, shall fail to approve or disapprove any application under this Act, the applicant may request, in writing to the Director, a decision from the Director either approving or disapproving the application.
- (2) Within five (5) days of the receipt of such request, the Director shall either approve or disapprove the application according to the provisions of this Chapter and any rules or regulations promulgated hereunder. Upon any disapproval, the procedures under subsection (a) of this section shall apply.
- (3) If the Director or authorized designee fails to either approve or disapprove the application within five (5) days of the receipt of such request, pursuant to this subsection, the application shall be deemed to be disapproved and the appeal provisions under subsection (a) of this section shall apply.

(c) Revocation. If the Director shall revoke any certificates, registrations or seize any tags, issued pursuant to this Act, the aggrieved party may appeal to the Commission by filing a formal written request for hearing by the Commission, according to such regulation or rule promulgated by the Commission. The matter shall be heard de novo by the Commission. The Commission may uphold, modify or overturn the Director's actions or direct the Director to take such action as the Commission deems just and proper.

(d) Standard of Review. For any appeal under this Chapter, the Commission shall give deference to the findings of the Director unless such findings are arbitrary and capricious. The Commission may uphold, modify or overturn the Director's actions or direct the Director to take such action as it may deem just and proper.

(e) Conduct of Hearing. The manner of appeal and conduct of any appeal hearing pursuant to this section shall be according to the Title 3A, section 301(e) and any rule or regulation promulgated thereunder. For any appeal pursuant to this Chapter, the decision of the Commission shall be final.

(f) This section shall not create, nor be construed to create, a right of action or mandamus against the Director, or authorized designee, except as provided herein this section for failure to approve or disapprove any application at any time.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 636. Rules Upon Enactment**

In order to provide for the efficient implementation of this Chapter, the following rules shall govern:

(a) Any eligible person, under this Act, may apply for and receive a title, tag, and decal for any motor vehicle at least ninety (90) days after the effective date of this Act, or sooner upon publication by the Director.

(b) This Act shall be mandatory as to all tribally owned vehicles at least ninety (90) days after the effective date of this Act, or sooner upon publication by the Director.

(c) This Act shall be optional for all other new or used motor vehicles purchased prior to or after the effective date of this Act.

[HISTORY: Enacted by TO 96-01, March 2, 1996; amended by TO 96-02, June 1, 1996.]

### **Section 637. Boat and Motor Licensing**

The BCR Commission is hereby granted the authority and jurisdiction to administer boat and motor licensing, as set forth herein. The BCR Commission is further authorized to promulgate, adopt, and enforce all necessary rules and regulations and prepare forms and records to enact and enforce the following boat and motor licensing provisions. The Tribal Law Enforcement Agency is hereby granted authority and jurisdiction to enforce the following boat and motor licensing provisions and any rules pertaining thereto adopted by the BCR Commission. The BCR Commission shall have the authority in cases of dispute to determine the price and/or value of any boat, watercraft, and/or motor.

#### **(a) Boat and Motor Registration**

(i) Registration fees for boats and outboard motors are assessed for the period beginning October 1 and ending September 30 of the following year. Three (3)-year registration fees are also available and are assessed for the period beginning October 1 and ending September 30 of the third year.

(ii) A boat or outboard motor must be registered every year whether in use or not. If an owner fails to register a boat or outboard motor for one or more years, upon registration thereafter, the owner must pay registration fees and penalties for the current year and all previous years not registered, not to exceed three (3) previous years.

(iii) Registration Fees are based on a combination of the actual purchase price and the number of years registered.

#### **(b) Registration Fees and Taxes**

The Commission shall register and collect:

- (i) Title Fees. The Commission shall charge a fee of Six Dollars (\$6.00) for issuing an original or transfer certificate of title and a fee of Six Dollars (\$6.00) for issuing a duplicate certificate of title.
- (ii) Registration Tax. There is hereby levied a registration tax of one and one-half percent (1.5%) of the value of each boat, watercraft, and/or motor registered as provided hereunder upon the transfer of legal ownership of any such boat, watercraft, and/or motor registered with the BCR Commission.
- (iii) Registration Fees
  - 1. Actual purchase price of less than \$150.00:
    - a. 1<sup>st</sup> year fee = administrative charge of \$1.00 plus \$2.00 for the first year.
    - b. 2<sup>nd</sup> through 20<sup>th</sup> year fee =\$3.00.
  - 2. Actual purchase price of \$150.00 or more:
    - a. 1<sup>st</sup> year fee = administrative charge of \$1.00 plus \$0.50 for every \$100.00 of the actual purchase price or any fraction thereof. The fee shall not exceed \$100.00.
    - b. 2<sup>nd</sup> through 20<sup>th</sup> year fee = eighty percent (80%) of the previous year's fee plus a \$1.00 administrative charge.
  - 3. If the actual purchase price is not known, the registration fee shall be based on the book value from NADA.
  - 4. If a boat, watercraft, and/or motor is registered on or after April 1, the registration fee shall be ½ of the fee as calculated above, otherwise the registration fee shall be the full fee.
  - 5. A three (3)-year registration is also available and is equal to ninety percent (90%) if the registration fee as calculated above, times 3 years.

(c) Penalty on New Assignments

New boats, watercraft, and/or motors must be registered within thirty (30) days from the date of assignment on the MSO or notarized bill of sale. If not registered within thirty (30) days, a penalty of twenty-five cents (\$0.25) per day is due upon registration, not to exceed two (2) times the registration fee.

(d) Penalty on Renewal Registration

Boat, watercraft and motor registrations expire on September 30 of each year. The month of

October is considered a grace month during which no penalty accrues. Penalties shall begin accruing starting November 1 at the rate set forth herein.

[HISTORY: Enacted by TO 2017-08, July 29, 2017.]

## **CHAPTER SEVEN**

### **RETAIL SALES FEE CODE OF THE SEMINOLE NATION OF OKLAHOMA**

#### **Section 701. Title**

This Act shall be known as the “Retail Sales Fee Code of the Seminole Nation of Oklahoma”

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 700 to Section 701 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 702. Effective Date**

This Act shall become effective (30) days after the date of passage by the General Council of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 700.1 to Section 702 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 703. Intent**

(a) This Act is enacted to exercise the regulatory jurisdiction of the Nation and to replenish the diminishing funds available for tribal services caused by the reduction in Federal funding. This Act is further enacted to strengthen the Nation’s government and to provide financing for the essential functions, operations and expenditures of the Nation’s government by regulating activities within its jurisdiction and providing fair procedures for imposing a sales fee including the enforcement thereof and collection of all fees necessary to carry out these purposes herein.

(b) Enforcement of the tribal sales fee will be applicable to only tribally-owned and operated enterprises and tribally-licensed establishments. It is the intent of this Act to levy and collect a tribal sales fee at specific locations: namely, the Nation’s Travel Plaza, Wewoka Trading Post, Rivermist Trading Post, Seminole Nation Bingo Concessions & Gift Shop and any smokeshops/businesses licensed by the Seminole Nation. The Nation has determined to exercise only a portion of its regulatory jurisdiction and authority and to reserve its other powers and authorities to be exercised as the Nation so determines. This reservation in no way diminishes the Nation’s capacity to exercise its jurisdiction nor is it to be construed as such. The intent of this Act is to impose the sales fee upon sales made by the tribally-owned, licensed or certified businesses.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 700.2 to Section 703 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **Section 704. Findings**

The General Council finds that it may legislate pursuant to its authority under the Constitution in matters to become laws of the Nation, including such legislation that will promote public health, education and charity and such other services that may contribute to the social and economic advancement of the members of the Nation.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 700.3 to Section 704 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 705. Definitions**

(a) “Business” means all activities engaged in or caused to be engaged in with the objective of gain, benefit or advantage, direct or indirect.

(b) “Commission” or “BCR Commission” means the Seminole Nation Business Corporate and Regulatory Commission as defined under Title 3A of the Code of Laws.

(c) “Consumer” means any person who receives or comes into possession of property from a retailer by means of a sale of such property.

(d) “Director” means the Director of the BCR Commission as defined under Title 3A of the Code of Laws of the Seminole Nation of Oklahoma

(e) “Doing business in this Nation” means the selling or any activity in the Nation in connection with selling in the Nation, of tangible personal property by a retail sale as defined in this Chapter, for use, storage, distribution or consumption. This term includes maintaining within this Nation, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse or other place of business.

(f) “Person” means any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust or political entity.

(g) “Property” means all tangible personal property of every kind and description, except as provided herein. For the purposes of this Chapter, the term “property” shall not include any real property including interests in real property, leasehold interests, any newspapers, or any natural or artificial gas, electricity, water or any other utility, or public service by telephone and telegraph companies to subscribers or users including transmission of messages, whether local or long distance, or services and rental charges having any connection with the transmission of any messages.

(h) “Reporting period” means the period of time for which the reporting of information requested under this Chapter is covered and due.

(i) “Retailer” means any person who, in the ordinary course of business, sells any property to another, whether such sale would be described as a “wholesale” or “retail” sale.

(j) “Sale” or “Sales” and derivatives means all sales, barter, trades, exchanges or other transfer of ownership or possession for value of property and any agreement, however characterized, by which a consumer is authorized to use personal property or to obtain admission or entrance into an entertainment event or place of amusement. This definition does not include any resales of items or property, or sales pursuant to any repossession or auctions.

(k) “Taxable sale” means the total amount received in money, credits or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer’s business, or other consideration valued in money from sales and purchases at retail within this Nation and included within the provisions of this Chapter.

(l) “Taxpayer” means any person obligated to account to the Commission for fees collected or to be collected under this Chapter.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 701 to Section 705 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 706. Commission and Director**

(a) Commission. In addition to any other powers and authorities of the Commission found under the Code of Laws of the Seminole Nation, the Commission is further empowered to engage in the following activities to enforce the provisions of the Act and to provide uniform methods of adding the fee to the selling price, including, but not limited to:

- (1) Formulating, promulgating and amending appropriate rules and regulations to effectuate the purposes of this Chapter.
- (2) Conducting appellate hearings under this Code.
- (3) Performing any other powers necessary to enforce this Code.

(b) Director. In addition to any other powers and authorities of the Director found under the Code of Laws of the Seminole Nation, the Director is further empowered to engage in the following activities to enforce the provisions of this Code, including, but not limited to:

- (1) Reviewing, approving or disapproving, issuing all licenses under this Code;
- (2) Computing fees due under this Chapter;
- (3) Depositing revenues;
- (4) For purposes of ascertaining the correctness of any return, or determining the amount of tax due from any person, the Director or his designee may hold investigations and hearings concerning any matters covered by this Act and may examine any books, papers, records or memoranda bearing upon such sales of any such person, and may require the attendance of

such person or any officer or employee of such person or of any person having knowledge of such sales and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the Director, or designee, or the Commission shall be bound by the technical rules of evidence and no informality in any proceeding or in the manner of taking testimony, shall invalidate any order or decision made or approved by the Director. The Director or his designee, shall have the power to administer oaths to such persons;

- (5) Any other powers necessary to enforce the provision of this Act.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 702 to Section 706 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 707. Fee on Sales**

(a) Except as provided herein, there is hereby levied upon sales of property made by all tribally-owned businesses, including the convenience stores, restaurants, hotels or motels, and concessions, and all non-tribally owned businesses which either own or possess a license or certification issued by the Nation to do business in the Nation, to consumers, a fee of eight percent (8%) of the actual sales price thereof, exclusive of any rebates. If a sale is consummated by trades, barter or exchange for anything other than money, the fee shall be computed at the fair market value of the property sold.

(b) There is levied and there shall be collected and paid a fee tax in the amount as stated herein as follows:

- (1) On the purchase price or charged upon all sales of tangible personal property at retail;
- (2) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, snack bars, and other like places of business at which prepared food or drink is regularly sold.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 703 to Section 707 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2018-05, April 28, 2018.]

## **Section 708. Specific Sales**

Gaming – (RESERVED)

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 704 to Section 708 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 709. Impact of Fees**

(a) The impact and legal incidence of the fees imposed by this Chapter is declared to be on the consumer and shall be added by the retailer to the purchase price of the property sold and recovered from the consumer. The retailer has the duty to collect the fee and serve as agent of the Nation for collection. No person, except as specifically authorized herein, shall advertise or hold out to the public or consumer that it will assume or absorb the fee or that it will not add the fee to the selling price or that any part thereof will be refunded. In addition to any other penalty under this Chapter, any unauthorized person so holding or advertising shall be civilly liable for a penalty of \$50.00 for each occurrence.

(b) Every retailer shall show the amount of such fees paid as a separate item on any invoices or receipts which they may issue.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 705 to Section 709 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 710. Payment of Fees**

(a) Every retailer shall submit to the Commission within fourteen (14) calendar days after the end of each calendar month a report on such form as the Commission shall prescribe showing the sales of said retailer and gross amount of sales fees collected during that calendar month. The retailer shall include the following information on such form:

- (1) The name and address of the retailer;
- (2) The total amount of gross sales of all property as defined herein by the retailer for the reporting period;
- (3) Deductions allowed by law from such total amount of gross sales and from the total amount received for the reporting period on such charge and time sales;
- (4) Receipts for the reporting period from exempt sales of property as defined herein rendered in the course of such business;
- (5) Receipts for the reporting period from the total amount of sales of tangible

personal property during such period in the course of such business, after deductions allowed by law have been made; and

(6) Such other pertinent information as the Director may require.

(b) Every retailer shall remit the sales fee collected during a calendar month to the Commission at the same time as the report for that calendar month is submitted.

(c) The Commission may provide, by regulation, an extension of the time due for making the report and remitting the fees due, provided no extension shall exceed ten (10) days.

(d) All information received by the Director from returns filed under this Act or from any investigation conducted under the provisions of the Act, shall be confidential, except for official purposes, and it shall be unlawful for any officer or employee of the Commission or the Nation to divulge and such information in any manner, except in accordance with a proper judicial order. The tribal auditor shall have access to all such information in accordance with and subject to the provisions of this Chapter and amendments thereto. Nothing in this section shall be construed to prohibit the disclosure of the taxpayer retailer's name, social security number, last known address and total tax fee liability, including penalty and interest, from sales tax fee returns to a debt collection agency contracting with the Commission.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 706 to Section 710 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 711. Penalties**

(a) Every retailer who shall fail to collect or remit the fees imposed by this Chapter shall be liable for the full amount of the fee owed plus interests of 18% per annum until paid.

(b) Willful failure to collect or pay over the fees imposed by this Chapter shall make the retailer liable for an additional penalty of one hundred percent (100%) of the fees due plus interest of 18% per annum until paid.

(c) Failure to remit the required fees imposed by this Chapter may result in a loss of any tribal license or TERO certification, removal from any priority or preferred list of vendors, suppliers, contractors or other services utilized by any Tribal governmental program, board, commission or agency, or a discontinuance or suspension of continued business operations within the Seminole Nation jurisdiction.

(d) If any vendor is delinquent in remitting the required fees, other than in unusual circumstances shown to the satisfaction of the Director or as otherwise allowed by Commission regulation, the retailer shall also be required to remit a penalty in an amount equal to one percent (1%) of the amount due for each day delinquent.

(e) Whenever, according to Commission regulations, the failure to comply with provisions of this Chapter was due to reasonable causes and not willful neglect, the Director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(f) Any individual who is responsible for collection or payment of sales fees or control, receipt, custody or disposal of funds due and owing under this Chapter who fails to collect such tax, or account for and pay over such tax, or attempts in any manner to evade or defeat such tax or the payment thereof shall be personally liable for the total amount of the tax evaded or not collected or not accounted for and paid over together with any interest and penalty imposed thereon. The provisions of this section shall apply regardless of the relationship with the retailer held by such individual and regardless of the form under which the retailer conducts business, whether a sole proprietorship, partnership or corporation.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 707 to Section 711 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 712. Bond**

To secure the collection of any fees, penalties or interest, due, or to become due under this Act, any person subject to paying, collecting or remitting such fee shall file a bond with the Director in such form and amount according to Commission regulation.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 708 to Section 712 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 713. Records**

Every retailer shall maintain for not less than three (3) years complete and adequate records including invoices showing all property received and sold or otherwise disposed of, the price at which sold, and the amount of sales fees collected and paid to the Commission.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 709 to Section 713 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 714. Exemptions**

(a) There is hereby exempted from the imposition, assessment and collection of retail sales fees:

- (1) All sales of motor fuel pursuant to Chapter 5 of this Title.
- (2) All sales of motor vehicle registration tags pursuant to Chapter 6 of this Title.
- (3) All sales of tobacco pursuant to Chapter 3 of this Title.
- (4) All sales to the United States and the State of Oklahoma governments and the departments and institutions and the political subdivision thereof in their governmental capacities only;

- (5) All sales to religious and charitable organizations in the conduct of their regular religious and charitable functions and activities;
- (6) All sales to schools, other than schools held or conducted for private or corporate profit.

(b) The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the Commission or from making such returns shall be on the retailer under such reasonable requirements of proof as the Commission may prescribe by regulations. Upon providing such proof according to Commission regulation, the Commission shall issue a fee-exempt identification number to such entities.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 710 to Section 714 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 715. Appeals**

(a) The Director, after reasonable notice and opportunity for review, may revoke the license of any person found by him to have violated any provision of this Chapter. Any person who engages in the business of selling at retail in this Chapter without a license may be subject to a civil penalty of fifty dollars (\$50.00) per day to a maximum penalty of one thousand dollars (\$1,000.00). Such penalty shall be assessed by the Director or his authorized agent and may be waived or reduced if such failure to obtain such license is due to reasonable cause and not willful neglect or intent to defraud.

(b) Any finding and order of the Director revoking the license of any person shall be subject to review by the Commission upon application of the aggrieved party. The procedure for review shall be the same as provided by the Commission rules and regulations.

(c) Appeals on fee payments.

- (1) The matter shall be heard de novo by the Commission. The Commission may uphold, modify or overturn the Director's actions or direct the Director to take such action as the Commission deems just and proper.
- (2) For any appeal under this Chapter, this Commission shall give deference to the findings of the Director unless such findings are arbitrary and capricious. The Commission may uphold, modify or overturn the Director's actions or direct the Director to take such action as it deems just and proper.
- (3) For any appeal pursuant to this Chapter, the decision of the Commission shall be final.

(d) This section shall not create, nor be construed to create, a right of action or mandamus against the Director, or authorized designee, except as provided herein for failure to approve or disapprove any license or revoking or failure to revoke any license.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 711 to Section 715 and subsection numbering modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 716. Apportionment**

The retail sale fee revenue shall be apportioned as follows:

(a) Forty percent (40%) of the total fees collected shall be deposited in an interest bearing fund established by the Treasurer of the Nation to be used as either matching funds for any grant or other funding award or as direct funding for the development, construction and operation of a Tribal facility within the Seminole Nation jurisdiction for the tribal members. Such funds shall be appropriated by duly approved General Council Resolution and included in the General Fund budget as a line item entitled “Tribal Government Facility” under the subheading “Special Appropriations.” No appropriation shall be authorized until the accumulation under this subsection either exceeds One Hundred Thousand dollars (\$100,000) or equals the minimum amount required for any matching funds for the tribal facility, whichever is earlier.

(b) Sixty percent (60%) of the total fees collected, together with any penalties and interest, shall be deposited in the Seminole Nation Revenue Account and shall be reserved for general governmental purposes, functions, programs or services for tribal members as authorized and appropriated by duly approved General Council Resolution. Appropriation from the 60% of taxes collected shall be based on revenue collected from previous years.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 712 to Section 716 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 717. Credits**

The retailer may take credit in his report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer’s business, included in the full price of a new article, shall be excluded from the gross sales.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 713 to Section 717 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 718. Licenses**

(a) Each person to which this Chapter applies shall obtain a license to engage in the business of selling at retail and display such license in a prominent place at such location. Such license shall be granted and issued by the Director and shall be in force and effect until December 31 of the year in which it is issued, unless revoked prior thereto. Such license shall be



granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business and such other facts as the Director may require.

(b) The licensee has the duty of renewing such license on or before January 2 of the following year in which the license is issued and each year thereafter if the licensee remains in retail business or liable to account for the fees provided in this Chapter. Unless evidence is submitted to the contrary, any account for which a license has been issued which shows no retail sales activity for any period of twelve consecutive months shall not be renewed. Such inactivity shall be considered prima facie evidence that the licensee is not in the business of selling at retail.

(c) For each license issued, a fee according to Commission regulation shall be paid, which fee shall accompany the application. Payment of a fee for such a license issued after June 30 shall be prorated in monthly increments.

(d) If business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

(e) Each license shall be numbered and shall show the name, residence, and place and character of business of the licensee. No license shall be transferable.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 714 to Section 718 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 719. Revocation**

Whenever any retailer authorized to collect the fees herein imposed fails to comply with any of the provisions of this Act, or any orders, rules or regulations of the Director prescribed and adopted hereunder, the Director may, upon notice and hearing, by order revoke the licenses or certifications, if any, issued to such retailer. If such retailer is a corporation authorized to do business in this Nation, the Director may certify a copy of the order finding that such retailer had failed to comply with certain specific provisions, orders, rules or regulations. The Director may upon certification of such order, revoke the license only when such corporation has not complied with its obligations under this Act. No order authorized in this section shall be made until the retailer is given an opportunity to be heard, and to show cause why such order should not be made. The hearing shall be conducted in accordance with the provisions of Titles 3A and 28 and any rules and regulations promulgated thereunder. The retailer aggrieved by the decision of the Director shall have a right of appeal from the Director's order according to Titles 3A and 28 and any rules and regulations promulgated thereunder.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 715 to Section 719 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 720. Title Headings**

The title headings shall not be used to construe the intent or language of this Code.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 716 to Section 720 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 721. Jurisdiction**

This Act is enacted and enforceable pursuant to the inherent sovereignty of the Nation and the jurisdiction under the Constitution of the Nation. This Act does not in any way grant or authorize jurisdiction to a court which could not, absent tribal or federal authorization, exercise jurisdiction within the Nation.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 717 to Section 721 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 722. Sovereign Immunity**

This Act does not waive the sovereign immunity of the Nation, its officials, officers, boards, commissions, agencies, directors or employees. This Act also does not create a cause or right of action, except as specifically provided herein.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 718 to Section 722 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 723. Severability**

In the event any part, portion, section or provision is held invalid by any court of competent jurisdiction, the remaining provisions, portions, parts or sections of the Act shall remain valid and in full force and effect.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 719 to Section 723 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 724. Letter Rulings**

RESERVED.

[HISTORY: Enacted by TO 2001-01, March 3, 2001; renumbered from Section 720 to Section 724 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 29**  
**SEMINOLE COMMERCIAL CODE**  
**INDEX**

<b>TITLE 29 SEMINOLE COMMERCIAL CODE INDEX .....</b>	<b>i</b>
<b>TITLE 29 SEMINOLE COMMERCIAL CODE.....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Short Title .....	1
Section 102. No Waiver of Sovereign Immunity. ....	1
Section 103. Purpose .....	1
Section 104. No Application to Property Not Alienable .....	1
Section 105. Reserved .....	1
Section 106. General Definitions .....	1
Section 107. Notice Knowledge.....	14
Section 108. Value.....	15
Section 109. Lease Distinguished From Security Interest .....	15
Section 110. General Scope .....	16
Section 111. Excluded Transactions.....	17
Section 112. Administration of This Title; Authority to Promulgate Regulations.....	18
Section 113. Obligation of Good Faith.....	18
Section 114. Course of Performance, Course of Dealing, and Usage of Trade .....	18
Section 115. Purchase-Money Security Interest.....	19
Section 116. Sufficiency of Description .....	21
Section 117. Parties' Power to Choose Applicable Law .....	21
<b>CHAPTER TWO EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES.....</b>	<b>23</b>
Section 201. General Effectiveness of Security Agreement .....	23
Section 202. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites.....	23
Section 203. After-Acquired Collateral; Future Advances .....	24
Section 204. Rights and Duties When Collateral Is In Secured Party's Possession or Control.....	25
Section 205. Additional Duties of Certain Secured Parties .....	25
Section 206. Reserved .....	25
Section 207. Request for Accounting; Request Regarding List of Collateral or Statement of Account .....	26

<b>CHAPTER THREE PERFECTION AND PRIORITY .....</b>	<b>27</b>
<b>SUBPART 1 LAW GOVERNING PERFECTION AND PRIORITY .....</b>	<b>27</b>
Section 301. Law Governing Perfection and Priority of Security Interests .....	27
Section 302. Reserved .....	27
Section 303. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title .....	28
Section 304. Reserved .....	28
Section 305. Reserved .....	28
Section 306. Reserved .....	28
Section 307. Reserved .....	28
<b>SUBPART 2 PERFECTION.....</b>	<b>28</b>
Section 308. When Security Interest is Perfected; Continuity of Perfection. ....	28
Section 309. Security Interest Perfected Upon Attachment .....	29
Section 310. When Filing Required to Perfect Security Interest; Security Interests to Which Filing Provisions Do Not Apply .....	29
Section 311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties.....	30
Section 312. Perfection of Security Interests in Chattel Paper, Documents, Goods Covered By Documents, Instruments, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession .....	31
Section 313. When Possession By Secured Party Perfects Security Interest Without Filing.....	32
Section 314. Perfection by Control .....	33
Section 315. Secured Party's Rights On Disposition of Collateral and in Proceeds.....	33
Section 316. Continued Perfection of Security Interest Following Change in Governing Law .....	34
<b>SUBPART 3 PRIORITY .....</b>	<b>36</b>
Section 317. Interests That Take Priority Over Security Interest.....	36
Section 318. Particular Priority Rules.....	37
Section 319. Priority of Security Interests in Fixtures and Crops .....	41
Section 320. Accessions .....	43
Section 321. Commingled Goods.....	44
Section 322. Priority of Security Interests in Goods Covered by Certificate of Title .....	44
Section 323. Priority Subject to Subordination. ....	45
<b>CHAPTER FOUR RIGHTS OF THIRD PARTIES.....</b>	<b>46</b>

Section 401.	Alienability of Debtor's Rights.....	46
Section 402.	Secured Party Not Obligated on Contract of Debtor or in Tort .....	46
Section 403.	Rights of Assignee.....	46
Section 404.	Restrictions on Assignment .....	47
<b>CHAPTER FIVE FILING .....</b>		<b>50</b>
Section 501.	Acceptance, Refusal, and Effectiveness of Financing Statements; Administration .....	50
Section 502.	Contents of Records; Authorization; Lapse; Continuation; Termination .....	51
<b>CHAPTER SIX DEFAULT .....</b>		<b>53</b>
<b>SUBPART 1 DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS.....</b>		<b>53</b>
Section 601.	Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes .....	53
Section 602.	Waiver and Variance of Rights and Duties.....	54
Section 603.	Agreement on Standards Concerning Rights and Duties.....	55
Section 604.	Procedure if Security Agreement Covers Real Property or Fixtures.....	55
Section 605.	Unknown Debtor or Secondary Obligor .....	55
Section 606.	Reserved .....	56
Section 607.	Collection and Enforcement by Secured Party .....	56
Section 608.	Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus .....	57
Section 609.	Secured Party's Limited Right to Take Possession After Default .....	57
Section 610.	Disposition of Collateral After Default .....	58
Section 611.	Notification Before Disposition of Collateral .....	59
Section 612.	Timeliness of Notification Before Disposition of Collateral .....	60
Section 613.	Contents and Form of Notification Before Disposition of Collateral.....	61
Section 614.	Reserved .....	61
Section 615.	Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.....	61
Section 616.	Explanation of Calculation of Surplus or Deficiency.....	63
Section 617.	Rights of Transferee of Collateral .....	63
Section 618.	Rights and Duties of Certain Secondary Obligors .....	64
Section 619.	Transfer of Record or Legal Title.....	64
Section 620.	Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Notification of Proposal; Effect of Acceptance; Compulsory Disposition of Collateral .....	65
Section 621.	Reserved .....	66

Section 622.	Reserved .....	66
Section 623.	Right to Redeem Collateral.....	66
Section 624.	Waiver .....	67
<b>SUBPART 2 NONCOMPLIANCE WITH THIS TITLE .....</b>		<b>67</b>
Section 625.	Remedies for Secured Party's Failure to Comply with this Title .....	67
Section 626.	Action in Which Deficiency or Surplus is in Issue .....	68
Section 627.	Determination of Whether Conduct was Commercially Reasonable .....	69
Section 628.	Non-liability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.....	70
Section 629.	Attorneys' Fees in Consumer Transactions.....	71
<b>CHAPTER SEVEN MISCELLANEOUS PROVISIONS.....</b>		<b>72</b>
Section 701.	Effective Date .....	72
Section 702.	Severability .....	72

**TITLE 29**  
**SEMINOLE COMMERCIAL CODE**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Short Title**

This title shall be known and may be cited as the "Seminole Nation of Oklahoma Commercial Code" or the "Seminole Commercial Code."

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 102. No Waiver of Sovereign Immunity**

The sovereign immunity of neither this Nation nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this title, absent a recorded, properly ratified, express waiver of sovereign immunity.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 103. Purpose**

This Title must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving this Nation.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 104. No Application to Property Not Alienable**

This Code does not apply to any type of property interest, where that interest is not free from all federal restrictions regarding sale, transfer, or encumbrance.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 105. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 106. General Definitions**

- (a) Definitions. In this title:
  - (1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
  - (2) "Account," except as used in "account for":

- (A) Means a right to payment of a monetary obligation, whether or not earned by performance:
  - (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
  - (ii) for services rendered or to be rendered;
  - (iii) for a policy of insurance issued or to be issued;
  - (iv) for a secondary obligation incurred or to be incurred;
  - (v) for energy provided or to be provided;
  - (vi) for the use or hire of a vessel under a charter or other contract;
  - (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or
  - (viii) as winnings in a lottery or other game of chance operated or sponsored by an Indian tribe or nation, governmental unit of an Indian tribe or nation, a person licensed or authorized by an Indian tribe or nation or governmental unit of an Indian tribe or nation to operate the game, a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State.
- (B) Does not include:
  - (i) rights to payment evidenced by chattel paper or an instrument;
  - (ii) commercial tort claims;
  - (iii) deposit accounts;
  - (iv) securities or investment accounts, including assets held in investment accounts;
  - (v) letter-of-credit rights or letters of credit; or
  - (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.
- (3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay



a negotiable instrument, even if the instrument constitutes part of chattel paper.

- (4) “Agreement,” as distinguished from “contract,” means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 114 of this title.
- (5) “As-extracted collateral” means:
  - (A) oil, gas, or other minerals that are subject to a security interest that:
    - (i) is created by a debtor having an interest in the minerals before extraction; and
    - (ii) attaches to the minerals as extracted; or
  - (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
- (6) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. A buyer in ordinary course of business does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (7) “Cash proceeds” mean money, checks, deposit accounts, or the like.
- (8) “Certificated security” means a security that is represented by a certificate.
- (9) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

- (10) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. A "monetary obligation" means an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include:
- (A) charters or contracts involving the use or hire of a vessel; or
  - (B) records that evidence a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- (11) "Collateral" means the property subject to a security interest. The term includes:
- (A) proceeds to which a security interest attaches;
  - (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
  - (C) goods that are the subject of a consignment.
- (12) "Commercial tort claim" means a claim arising in tort with respect to which:
- (A) the claimant is an organization; or
  - (B) the claimant is an individual and the claim:
  - (C) arose in the course of the claimant's business or profession; and
  - (D) does not include damages arising out of personal injury to or the death of an individual.
- (13) "Commission" shall mean the Business and Corporate Regulatory Commission established pursuant to Title 3A of the Seminole Nation of Oklahoma Code.
- (14) "Consignee" means a merchant to which goods are delivered in a consignment.
- (15) "Consignment" means a transaction, regardless of its form, in which:

- (A) a person delivers goods to a merchant for the purpose of sale;
  - (B) the merchant:
  - (C) deals in goods of that kind under a name other than the name of the person making delivery;
  - (D) is not an auctioneer; and
  - (E) is not generally known by its creditors to be substantially engaged in selling the goods of others;
  - (F) with respect to each delivery, the aggregate value of the goods is Three Thousand Dollars (\$3,000.00) or more at the time of delivery;
  - (G) the goods are not consumer goods immediately before delivery; and
  - (H) the transaction does not create a security interest that secures an obligation.
- (16) “Consignor” means a person that delivers goods to a consignee in a consignment.
- (17) “Consumer” means an individual who enters into a transaction primarily for personal, family or household purposes.
- (18) “Consumer goods” mean goods that are used or bought for use primarily for personal, family, or household purposes.
- (19) “Consumer transaction” means a transaction in which:
- (A) an individual incurs an obligation primarily for personal, family, or household purposes; and
  - (B) a security interest secures the obligation.
- (20) “Continuation statement” means an amendment of a financing statement which:
- (A) identifies, by its file number, the initial financing statement to which it relates; and
  - (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

- (21) “Contract,” as distinguished from Agreement,” means the total legal obligation that results from the parties’ agreement as determined by this title as supplemented by any other applicable laws.
- (22) “Control,” with respect to a certificated security in registered form, means that the certificate is:
- (A) delivered to the purchaser; and
  - (B) indorsed to the secured party or in blank by an effective endorsement; or
  - (C) registered in the name of the secured party, upon original issue or registration of transfer by the issuer.
- (23) “Control,” with respect to an investment account, means that:
- (A) the secured party has become the holder of the investment account;
  - (B) the investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;
  - (C) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or
  - (D) a security interest has been granted by the holder of the investment account to the holder’s own investment intermediary.
- (24) “Control,” with respect to mutual fund shares that are not in an investment account, means that:
- (A) the mutual fund shares have been delivered to the secured party under applicable law; or
  - (B) the issuer of the mutual fund shares has agreed that it will comply with instructions originated by the secured party without further consent by the debtor.
- (25) “Debtor” means:
- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured; or

- (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
  - (C) a consignee.
- (26) “Document” means a record that:
  - (A) in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and
  - (B) purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods.
- (27) “Encumbrancer” means a person having a legal claim, such as a lien or mortgage, against property.
- (28) “Equipment” means goods other than inventory, farm products, or consumer goods.
- (29) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
  - (A) crops grown, growing, or to be grown, including:
  - (B) crops produced on trees, vines, and bushes; and
  - (C) aquatic goods produced in aquacultural operations;
  - (D) livestock, born or unborn, including wild game or aquatic goods produced in aquacultural operations;
  - (E) supplies used or produced in a farming operation; or
  - (F) products of crops or livestock in their unmanufactured states.
- (30) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.
- (31) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

- (32) “Fixture filing” means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this title relating to contents of financing statements.
- (33) “Fixtures” mean goods that have become so related to particular real property that an interest in them arises under real property law.
- (34) “General Council” means the General Council of the Seminole Nation of Oklahoma.
- (35) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposits accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- (36) “Goods” mean all things that are movable when a security interest attaches.
  - (A) The term includes:
    - (i) fixtures;
    - (ii) standing timber that is to be cut and removed under a conveyance or contract for sale;
    - (iii) the unborn young of animals;
    - (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes;
    - (v) manufactured homes; and
    - (vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
      - (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or
      - (II) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.
  - (B) The term does not include:

- (i) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or
  - (ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.
- (37) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include:
  - (A) a security or an investment account;
  - (B) a letter of credit; or
  - (C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
- (38) “Inventory” means goods, other than farm products, which:
  - (A) are leased by a person as lessor;
  - (B) are held by a person for sale or lease or to be furnished under a contract of service;
  - (C) are furnished by a person under a contract of service; or
  - (D) consist of raw materials, work in process, or materials used or consumed in a business.
- (39) “Investment account” means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.
- (40) “Investment intermediary” means a securities intermediary under applicable law or a commodity intermediary under applicable law.
- (41) “Lien creditor” means:
  - (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
  - (B) an assignee for benefit of creditors from the time of assignment;

- (C) a trustee in bankruptcy from the date of the filing of the petition; or
  - (D) a receiver in equity from the time of appointment.
- (42) “Manufactured home” means any structure meeting the definitional requirements found under 42 U.S.C. 5402(6) (2004), as the same may be amended from time to time.
- (43) “Manufactured-home transaction” means a secured transaction:
- (A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
  - (B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
- (44) “Nation” shall mean the Seminole Nation of Oklahoma.
- (45) “Nation's District Court” means the Court of Indian Offenses until such time as the Seminole Nation of Oklahoma establishes a District Court.
- (46) “Obligor” means a person, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, that:
- (A) owes payment or other performance of the obligation,
  - (B) has provided property other than the collateral to secure payment of other performance of the obligation, or
  - (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
- (47) “Organization” means a person other than an individual.
- (48) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.
- (49) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (50) “Place of business” means a place where a person conducts its affairs.
- (51) “Proceeds” mean the following property:
- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;



- (B) whatever is collected on, or distributed on account of, collateral;
  - (C) rights arising out of collateral;
  - (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
  - (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (52) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- (53) “Public-finance transaction” means a secured transaction in connection with which:
- (A) debt securities are issued;
  - (B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and
  - (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, this Nation or a State.
- (54) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (55) “Purchaser” means a person that takes by purchase.
- (56) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.
- (57) “Record,” except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

- (58) “Registered organization” means an organization organized solely under the law of an Indian tribe or nation, a single State, or the United States, and as to which the Indian tribe or nation, the State, or the United States must maintain a public record showing the organization to have been organized.
- (59) “Secondary obligor” means an obligor to the extent that:
- (A) the obligor’s obligation is secondary; or
  - (B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.
- (60) “Secured party” means:
- (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
  - (B) a consignor;
  - (C) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
  - (D) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or
  - (E) a person that holds a security interest arising under other applicable law.
- (61) ” Security” includes mutual fund shares that are not in an investment account.
- (62) “Security agreement” means an agreement that creates or provides for a security interest.
- (63) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a “security interest.” Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to the provisions of Section 109 of this title.

- (64) “Send,” in connection with a record or notification, means:
- (A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
  - (B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).
- (65) “Sign” means, with the present intent to authenticate any record:
- (A) to execute or adopt a tangible symbol; or
  - (B) to attach or logically associate an electronic symbol, sound, or process to or with a record.
- (66) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
- (67) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision, or any department, agency, or instrumentality thereof.
- (68) “Termination statement” means an amendment of a financing statement which:
- (A) identifies, by its file number, the initial financing statement to which it relates; and
  - (B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.
- (69) “Tribal business day” means a day on which the offices of the government of this Nation are open for conduct of their ordinary business.
- (70) “Unfair surprise” means a situation in which a party, having had no notice of some action or proffered evidence, is unprepared to answer or refute it.

(b) Liberal Construction. Subject to the provisions of this title dealing with course of performance, course of dealing, and usage of trade (Section 114), the meaning of a term not defined by this title is to be derived from the context involved, with due consideration for

consistency in meaning with uniform principles of commercial and contract law operative in the United States.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 107. Notice Knowledge**

(a) Notice Defined. Subject to subsection (f), a person has “notice” of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) Knowledge Defined. “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) Discover Defined. “Discover,” “learn,” or words of similar import, refer to knowledge rather than to reason to know.

(d) Notifying or Giving Notice or Notification. A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Receipt Generally. Subject to subsection (f), a person “receives” a notice or notification when:

- (1) it comes to that person’s attention; or
- (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Receipt by Organization. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 108. Value**

Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

- (a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (b) as security for, or in total or partial satisfaction of, a preexisting claim;
- (c) by accepting delivery under a preexisting contract for purchase; or
- (d) in return for any consideration sufficient to support a simple contract.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 109. Lease Distinguished From Security Interest**

(a) Basic Test. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) Transactions That Create Security Interests. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

- (1) the original term of the lease is equal to or greater than the remaining economic life of the goods;
- (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
- (4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) Factors That Do Not Create Security Interests. A transaction in the form of a lease does not create a security interest merely because:

- (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially

equal to or is greater than the fair market value of the goods at the time the lease is entered into;

- (2) the lessee assumes risk of loss of the goods;
- (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) the lessee has an option to renew the lease or to become the owner of the goods;
- (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 110. General Scope**

(a) General Scope of this Title. Except as otherwise provided in Section 111 of this Title on excluded transactions, this Title applies to the following, if within the jurisdiction of the Nation:

- (1) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (3) a consignment; and
- (4) any other commercial activities, including sales of goods, leases of goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, and investment securities, to the extent those commercial activities are implicated in clauses (1), (2) or (3) of this subsection (a).

(b) Consistency in Application. Subject to the provisions of Section 114 of this title dealing with course of performance, course of dealing, and usage of trade, the application of this Title to a type of transaction enumerated in subsection (a)(4) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States.

(c) Security Interest in Secured Obligation. The application of this title to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this title does not apply.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 111. Excluded Transactions**

This Title does not apply to:

- (a) a landlord's lien;
- (b) a lien created by statute or other rule of law for services or materials, but Section 318(k) applies with respect to priority of such a lien;
- (c) a lien created under the laws of any other Indian tribe or nation;
- (d) an assignment of a claim for wages, salary, or other compensation of an employee;
- (e) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (f) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (g) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (h) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (j) a right of recoupment or set-off, but Section 403 of this title on agreements not to assert defenses against assignees applies with respect to defenses or claims of an account debtor;
- (k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
  - (1) a fixture filing; and
  - (2) security agreements covering personal and real property in Section 604;
- (l) an assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds and priorities in proceeds; or

(m) an assignment of a deposit account, except as provided with respect to proceeds and priorities in proceeds.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 112. Administration of This Title: Authority to Promulgate Regulations**

The Commission, or its designated successor, is charged with the administration of this Title. In accordance with applicable administrative and interpretive rules the Commission or its designated successor may promulgate regulations necessary for the effective implementation and enforcement of this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007; amended by TO 2007-17, March 1, 2008.]

#### **Section 113. Obligation of Good Faith**

Every contract or duty within this Title imposes, with respect to its performance or enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of good faith and fair dealing.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 114. Course of Performance, Course of Dealing, and Usage of Trade**

(a) Course of Performance Defined. A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) Course of Dealing Defined. A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) Usage of Trade Defined. A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) Effect. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be



aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Practical Construction; Hierarchy. Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

- (1) express terms prevail over course of performance, course of dealing, and usage of trade;
- (2) course of performance prevails over course of dealing and usage of trade; and
- (3) course of dealing prevails over usage of trade.

(f) Relevance of Course of Performance. Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Inadmissibility of Usage of Trade. Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## **Section 115. Purchase-Money Security Interest**

(a) Definitions. In this section:

- (1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral.
- (2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-Money Security Interest in Goods. A security interest in goods is a purchase-money security interest:

- (1) to the extent that the goods are purchase-money collateral with respect to that security interest;
- (2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-

money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

- (3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) **Purchase-Money Security Interest in Software.** A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

- (1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
- (2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) **Consignor's Inventory Purchase-Money Security Interest.** The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) **Application of Payment in Non-Consumer Transaction.** In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

- (1) in accordance with any reasonable method of application to which the parties agree;
- (2) if paragraph (1) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or
- (3) if neither paragraph (1) nor paragraph (2) applies, in the following order:
  - (A) to obligations that are not secured; and
  - (B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) **No Loss of Purchase-Money Security Interest in Non-Consumer Transaction.** In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:

- (1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

- (2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- (3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) **Burden of Proof in Non-Consumer Transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 116. Sufficiency of Description**

(a) Except as otherwise provided in subsections (b) and (c), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) In a security agreement, a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(c) A description only by type of collateral defined in this title is an insufficient description of:

- (1) a commercial tort claim; or
- (2) in a consumer transaction, any collateral.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 117. Parties’ Power to Choose Applicable Law**

(a) **Choice of Law Generally.** Except as provided in subsection (b) and unless preempted by federal law, if a transaction bears a reasonable relation to this Nation and also to another Indian tribe or nation, State, or country, the parties may agree that the law either of this Nation or of such other Indian tribe or nation, State, or country governs the parties’ rights and duties. In the absence of an effective agreement, this title applies to all transactions bearing an appropriate relation to this Nation. The fact that the law of another Indian tribe or nation, State, or country is applicable as provided in this section does not affect the jurisdiction or venue of this Nation, nor does it waive the sovereign immunity of this Nation or of any agency or instrumentality thereof.

(b) **When Agreement Ineffective.** An agreement otherwise effective under subsection (a) is ineffective in any of the following cases:

- (1) in a consumer transaction;

- (2) to the extent the agreement purports to vary the provisions of Sections 301 or 303 of this Title, concerning the law governing perfection and priority;  
or
- (3) to the extent that application of the law of the Indian tribe or nation, State, or country designated in the agreement would be contrary to a fundamental policy of this Nation.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## **CHAPTER TWO**

### **EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES**

#### **Section 201. General Effectiveness of Security Agreement**

(a) Except as otherwise provided in this Title or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this title is subject to:

- (1) any applicable rule of law which establishes a different rule for consumers;
- (2) any other applicable tribal, federal or State statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and
- (3) any consumer-protection statute or regulation.

(c) In case of conflict between this title and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation prevails.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 202. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites**

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (g), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
  - (A) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned; or
  - (B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement and this title; or

(C) the collateral is a security or an investment account and the secured party has control pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to a secured party's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement, a security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.

(d) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this title.

(e) The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(f) The attachment of a security interest in an investment account is also attachment of a security interest in any securities or commodity contracts credited to the investment account.

(g) Law other than this title determines when and if another person becomes bound by a security agreement entered into by a debtor.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 203. After-Acquired Collateral: Future Advances**

(a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

- (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or
- (2) a commercial tort claim.

(c) A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 204. Rights and Duties When Collateral Is In Secured Party's Possession or Control**

(a) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.

(b) A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.

(c) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, subsection (a) does not apply unless the secured party is entitled under an agreement:

- (1) to charge back uncollected collateral; or
- (2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 205. Additional Duties of Certain Secured Parties**

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account shall send to the investment intermediary with which the investment account is maintained a signed statement that releases the investment intermediary from any further obligation to comply with instructions originated by the secured party.

(c) Within ten (10) tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under the provisions of Section 403 of this title dealing with discharge of an account debtor and notification of an assignment, a signed record that releases the account debtor from any further obligation to the secured party. However, this subsection does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 206. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 207. Request for Accounting: Request Regarding List of Collateral or Statement of Account**

(a) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) A secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, must comply with such a request within ten (10) tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party must disclose the name and address of any known successor in interest. A successor in interest is not subject to this section until a request is received by the successor.

(c) A debtor is entitled to such statement once every six (6) months without charge. The secured party may require payment of a fee not exceeding Twenty-five Dollars (\$25.00) for each additional statement furnished.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]



## **CHAPTER THREE PERFECTION AND PRIORITY**

### **SUBPART 1 LAW GOVERNING PERFECTION AND PRIORITY**

#### **Section 301. Law Governing Perfection and Priority of Security Interests**

Except as otherwise provided in Section 303 of this title with respect to goods covered by a certificate of title, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(a) Except as otherwise provided in this Title, Chapter 3 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) if the security interest is created pursuant to this title;
- (2) from the time that the debtor becomes subject to the jurisdiction of this Nation (Section 316(d) and (e)); or
- (3) from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of this Nation.

(b) Except as provided in paragraph (c), while goods are located within a jurisdiction, the local law of that jurisdiction governs:

- (1) perfection of a security interest in the goods by filing a fixture filing; and
- (2) perfection of a security interest in timber to be cut.

(c) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(d) This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 302. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 303. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title**

(a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdictions under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of:

- (1) the time the certificate of title ceases to be effective under the law of the issuing jurisdiction; or
- (2) the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 304. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 305. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 306. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 307. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**SUBPART 2  
PERFECTION**

**Section 308. When Security Interest is Perfected: Continuity of Perfection**

(a) Except as otherwise provided in this section and the next section dealing with security interests perfected upon attachment, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Title have been satisfied. A

security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) A security interest is perfected continuously if it is originally perfected by one method under this title and is later perfected by another method under this Title, without an intermediate period when it was unperfected.

(c) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(d) Perfection of a security interest in an investment account also perfects a security interest in any securities or commodity contracts credited to the investment account.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 309. Security Interest Perfected Upon Attachment**

The following security interests are perfected when they attach:

(a) a purchase-money security interest in consumer goods, except as otherwise provided in Section 311(b) regarding goods subject to certain statutes, regulations or treaties;

(b) a security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;

(c) a sale of a payment intangible or a promissory note;

(d) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(e) a security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 310. When Filing Required to Perfect Security Interest: Security Interests to Which Filing Provisions Do Not Apply**

(a) Except as otherwise provided in subsection (b) and Section 312(b) of this title dealing with perfection of a security interest in money, a financing statement must be filed to perfect all security interests.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Section 308(c), dealing with liens securing rights to payment;

- (2) that is perfected when it attaches under Section 309;
- (3) in property subject to a statute, regulation, or treaty described in Section 311(a);
- (4) in goods in possession of a bailee which is perfected under Section 312(d)(1) or (2);
- (5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under Section 312(e), (f) or (g);
- (6) in collateral in the secured party's possession under Section 313;
- (7) in a security or an investment account perfected by control under Section 314;
- (8) in proceeds which is perfected under Section 315; or
- (9) that is perfected under Section 316 relating to continued perfection of security interests perfected under the law of another jurisdiction.

(c) If a secured party assigns a perfected security interest, a filing under this title is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties**

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

- (1) any law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this title requiring that security interests be perfected by filing; or
- (2) any certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any central filing statute other than the one provided by this title; or
- (3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of

the security interest obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this title. Except as otherwise provided in subsection (d) and the provisions of this title providing for perfection by possession when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and the provisions of this title providing for continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this title.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 312. Perfection of Security Interests in Chattel Paper, Documents, Goods Covered By Documents, Instruments, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession**

(a) A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

(b) Except as otherwise provided in the provisions of this title dealing with perfection with respect to proceeds, a security interest in money may be perfected only by the secured party taking possession under the provisions of this title dealing with perfection by possession.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

- (1) a security interest in the goods may be perfected by perfecting a security interest in the document; and
- (2) a security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party; or
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or
- (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty (20) day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 313. When Possession By Secured Party Perfects Security Interest Without Filing**

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or chattel paper by taking possession of the collateral.

(b) With respect to goods covered by a certificate of title issued by this Nation or a State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 316(c), relating to continued perfection of goods covered by a certificate of title.

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

- (1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
- (2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(f) If a person acknowledges that it holds possession for the secured party's benefit:

- (1) the acknowledgment is effective under subsection (c), even if the acknowledgment violates the rights of a debtor; and
- (2) unless the person otherwise agrees, or law other than this title otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 314. Perfection by Control**

A security interest in a security or an investment account may be perfected by control.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 315. Secured Party's Rights On Disposition of Collateral and in Proceeds**

(a) Except as otherwise provided in this title and in any applicable law dealing with entrustment of goods:

- (1) a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest; and
- (2) a security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

- (1) if the proceeds are goods, to the extent provided by the provisions of this title dealing with commingled goods; and
- (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, which is permitted under law other than this title with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first (21st) day after the security interest attaches to the proceeds unless:

- (1) the following conditions are satisfied:
  - (A) a filed financing statement covers the original collateral;
  - (B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
  - (C) the proceeds are not acquired with cash proceeds; or
- (2) the proceeds are identifiable cash proceeds; or
- (3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty (20) days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

- (1) when the effectiveness of the filed financing statement lapses or is terminated under the provisions of this title dealing with lapse or termination; or
- (2) the twenty-first (21st) day after the security interest attaches to the proceeds.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 316. Continued Perfection of Security Interest Following Change in Governing Law**

(a) A security interest, to which this title becomes applicable, that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;



- (2) the expiration of four (4) months after the debtor becomes subject to the jurisdiction of this Nation (subsections (d) and (e)); or
- (3) the expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of this Nation.

(b) If a security interest described in subsection (a) becomes perfected under the law of this Nation before the end of the applicable period described in that subsection, it remains perfected thereafter until perfection lapses in accordance with this title. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A security interest, to which this title becomes applicable, which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this Nation remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under Section 311(b) or 313, dealing with perfection by compliance with other law or by possession, are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this Nation; or
- (2) the expiration of four (4) months after the goods had become so covered.

(d) For purposes of this section only, a debtor becomes subject to the jurisdiction of this Nation if:

- (1) the debtor is an individual whose principal residence comes to be within this jurisdiction or who becomes a member of this Nation;
- (2) the debtor is an organization, other than a registered organization, and its sole place of business or, if it has more than one place of business, its chief executive office, comes to be within this jurisdiction; or
- (3) the debtor comes to be
  - (A) a registered organization that is organized solely under the law of this Nation; or
  - (B) incorporated under a charter issued to an Indian tribe or nation by the United States Secretary of the Interior pursuant to 25 U.S.C. 477, as the same may be amended from time to time.

(e) For purposes of subsection (d):

- (1) a person, other than a registered organization, continues to be subject to the jurisdiction of this Nation notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and
- (2) a registered organization continues to be subject to the jurisdiction of this Nation notwithstanding:
  - (A) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such; or
  - (B) the dissolution, winding up, or cancellation of the existence of the registered organization.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **SUBPART 3 PRIORITY**

#### **Section 317. Interests That Take Priority Over Security Interest**

- (a) A security interest is subordinate to the rights of:
  - (1) a person that becomes a lien creditor before the security interest is perfected;
  - (2) a buyer of tangible personal property (including instruments and tangible documents or chattel paper), a lessee of goods, a licensee of a general intangible, or a buyer of accounts or general intangibles or securities that:
    - (A) gives value;
    - (B) in the case of a buyer of tangible personal property, a lessee of goods, or a buyer of a security certificate, acquires possession; and
    - (C) in all cases to which this subsection (a)(2) applies, without knowledge of the security interest and before it is perfected; or
  - (3) a secured party entitled to priority under subsection (c).
- (b) Notwithstanding subsection (a), a purchase money secured party that files a financing statement before or within twenty (20) days after the debtor acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.
- (c) Priority among conflicting security interests in the same collateral is determined as follows:

- (1) Conflicting perfected security interests in the same collateral rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest is first perfected, if there is no period thereafter when there is neither filing nor perfection.
- (2) A perfected security interest has priority over a conflicting unperfected security interest.
- (3) The first security interest to attach has priority if conflicting security interests are unperfected.

(d) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in Section 318.

(e) Except as provided elsewhere in this chapter, a security interest that has priority under Section 318(e), (f) or (j) also has priority over a conflicting security interest in proceeds if:

- (1) the security interest in proceeds is perfected;
- (2) the proceeds are cash proceeds or of the same type as the collateral; and
- (3) in the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(f) If a security interest in chattel paper, negotiable documents, instruments, securities or investment accounts is perfected by a method other than filing, and if the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter of credit rights, then priority in the proceeds is determined by the order of any filing.

(g) If applicable law other than this title gives a security interest or right of set-off to any person with respect to a letter of credit, a buyer (or seller) or lessee of goods, or in personal property that is not subject to this title, that law governs in the event of conflict with the provisions of this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 318. Particular Priority Rules**

(a) This section creates exceptions to the general priority rules of Section 317.

(b) For the purpose of this title, while goods are in the possession of a consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. If Chapter 3 of this title results in the consignor having priority over a

creditor of the consignee, law other than this title determines the rights and title of the consignee with regard to that creditor.

(c) Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee or lessee takes its interest in ordinary course of business is to be determined by criteria parallel to those for a buyer in ordinary course of business pursuant to Section 102(a)(7) of this title. This subsection does not apply to:

- (1) a buyer of farm products from a person engaged in farming operations, unless the buyer obtains from the seller a notarized statement setting forth the name and address of any person that has a security interest in the farm products; and either
  - (A) obtains a consent to the sale, free of the security interest from the secured party; or
  - (B) makes payment for the farm products jointly to the seller and the secured party; or
- (2) a buyer of goods in the possession of the secured party as provided in Section 313 of this title.

(d) A buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) in the case of goods having a value of Five Thousand Dollars (\$5,000.00) or more, before the filing of a financing statement covering the goods. However, this subsection does not apply to a buyer of goods in the possession of the secured party as provided in Section 313 of this title.

(e) Purchaser of chattel paper or instrument.

- (1) A purchaser of chattel paper or an instrument has priority over a security interest if:

- (A) the purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;
  - (B) the collateral does not indicate that it has been previously assigned to an identified person other than the purchaser; and
  - (C) the purchaser is otherwise without knowledge that the purchase violates the rights of the secured party.
- (2) A purchaser with priority in chattel paper under subsection (E)(1) also has priority in proceeds of the chattel paper to the extent that:
- (A) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or
  - (B) Section 317(c), (d) or (e) so provides.

(f) This title does not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to investment property under other applicable law. Filing under this title is not notice of a claim or defense to the holder or protected person.

(g) Priority of future advances.

- (1) With respect to a conflicting security interest, the priority of an advance under a security agreement is determined under Section 317(b), except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment as provided in Section 309 or temporarily by law as provided in Section 312(e), (f) or (g) and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means.
- (2) With respect to a lien creditor, the security interest securing an advance is subordinate if the advance is made more than forty-five (45) days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.
- (3) With respect to a buyer of goods other than a buyer in ordinary course of business as provided in Section 102(a)(7), and with respect to a lessee of goods that does not take its lease in ordinary course of business as provided in Section 318(c), the security interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or forty-five (45) days after the purchase, unless the advance is made pursuant to a commitment entered

into without knowledge of the purchase and before the expiration of the forty-five (45) day period.

- (4) Paragraphs (1) and (2) of this subsection do not apply to a security interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes.

(h) The following rules govern the priority of a purchase money security interest and a conflicting security interest in collateral and its proceeds:

- (1) A perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest, and a perfected security interest in identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.
- (2) A perfected purchase-money security interest in inventory or livestock that are farm products has priority over a conflicting security interest if the purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party sends timely and appropriate notice to the holder of the conflicting security interest, provided that no such notice is required unless the holder of the conflicting security interest has filed a financing statement covering the same types of goods:
  - (A) before the purchase-money security interest is perfected by filing; or
  - (B) if the purchase-money security interest is temporarily perfected under Section 312(f), before the beginning of the applicable twenty (20) day period. If a purchase-money secured party has priority in inventory under this paragraph (2), it also has priority in chattel paper or an instrument constituting proceeds, in proceeds of the chattel paper except as otherwise provided in this section, and in identifiable cash proceeds received on or before delivery of the goods to a buyer. If a purchase-money secured party has priority in livestock that are farm products under this paragraph (2), it also has priority in their identifiable proceeds and products in their unmanufactured states.
- (3) A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods.

- (4) Notwithstanding the rest of this subsection, if two or more purchase- money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined by the rule of Section 317(b).

(i) A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(j) A security interest in a security or an investment account perfected by control, as provided under Section 314, has priority over a security interest perfected in another way. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an investment intermediary in the investment account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession as provided in Section 313, and not by control, has priority over a conflicting security interest perfected by a method other than control.

(k) A lien created by statute or rule of law which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business and whose effectiveness depends on the person's possession of the goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 319. Priority of Security Interests in Fixtures and Crops**

(a) A security interest under this title may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this title in ordinary building materials incorporated into an improvement on land.

(b) This title does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the debtor has a security interest of record in or is in possession of the real property;
- (2) the security interest is a purchase-money security interest;

- (3) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (4) the security interest is perfected by an appropriate filing before the goods become fixtures or within twenty (20) days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
  - (A) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and
  - (B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
- (2) before the goods become fixtures, the security interest is perfected by any method permitted by this title and the fixtures are readily removable:
  - (A) factory or office machines;
  - (B) equipment that is not primarily used or leased for use in the operation of the real property; or
  - (C) replacements of domestic appliances that are consumer goods;
- (3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this title; or
- (4) the security interest is:
  - (A) created in a manufactured home in a manufactured-home transaction; and
  - (B) perfected pursuant to a statute described in Section 311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
- (2) the debtor has a right to remove the goods as against the encumbrancer or owner.



(g) The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 320. Accessions**

(a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this chapter determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 311(b).

(e) After default, subject to Chapter 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 321. Commingled Goods**

(a) In this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this chapter determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

- (1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
- (2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 322. Priority of Security Interests in Goods Covered by Certificate of Title**

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title pursuant to Section 106(a)(9) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(a) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(b) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 311(b), after issuance of the certificate and without the conflicting secured party’s knowledge of the security interest.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 323. Priority Subject to Subordination**

This title does not preclude subordination by agreement by a person entitled to priority.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## **CHAPTER FOUR**

### **RIGHTS OF THIRD PARTIES**

#### **Section 401. Alienability of Debtor's Rights**

Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this title; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. This section is subject to Section 404, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 402. Secured Party Not Obligated on Contract of Debtor or in Tort**

The existence of a security interest or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 403. Rights of Assignee**

(a) An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment in good faith, and for value as defined in the law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if:

- (1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;
- (2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and
- (3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

(b) If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or service, and the issuer seeks or acquires the goods or services primarily for personal, family or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note, including a holder in due course.

(c) Except to the extent an agreement to the contrary is enforceable under subsection (a), the rights of an assignee are subject to reduction of the amount owed by reason of all terms

of the contract between the account debtor and assignor, any defense or claim in recoupment arising from the transaction that gave rise to the contract, and any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the assignee.

(d) An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

- (1) adequate notification that performance is to be rendered to the assignee or transferee, signed by:
  - (i) in the case of an account debtor, the assignor or assignee; or
  - (ii) in the case of a negotiable promissory note, the transferor or transferee; and
- (2) reasonable proof of the assignment or transfer, if requested by such account debtor or party. In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

(e) A modification of or substitution for an assigned contract is effective against an assignee to the extent provided by law other than this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 404. Restrictions on Assignment**

- (a) A commercially harmful restriction on alienation of property is invalid.
- (b) In an assignment of accounts, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term “commercially harmful restriction on alienation” means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it:
  - (1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the affected property; or
  - (2) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.

(c) In a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, or license, or franchise) that is not a sale, the term “commercially harmful restriction on alienation” has the same meaning as in subsection (b) except that the references to enforcement of a security interest appearing in subsection (b)(1) and (2) are excluded. To the extent a commercially harmful restriction on alienation under paragraph (c)(1) would otherwise be effective under law other than this title, the creation, attachment, or perfection of the security interest:

- (1) does not impose a duty or obligation on the account debtor or person obligated on the promissory note;
- (2) is not enforceable against the account debtor or person obligated on the promissory note; and
- (3) does not entitle the secured party to:
  - (A) use the debtor’s rights in or to the property;
  - (B) have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or
  - (C) enforce the security interest.

(d) In addition to the meanings set forth in subsections (b) and (c), the term “commercially harmful restriction on alienation” includes a rule of law to the extent that it:

- (1) requires the consent of a governmental body or official to the assignment or transfer of, or actions described in subsection (b) or (c), as applicable, regarding a security interest in, the property; or
- (2) has any of the effects of a commercially harmful restriction on alienation as defined in subsection (b) or (c), as applicable.

(e) This section is subject to any different rule in other law for a consumer. In addition, this section does not apply to an assignment of:

- (1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(1) or (2), as the same may be amended from time to time;
- (2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4), as the same may be amended from time to time;
- (3) a structured settlement payment right; or
- (4) a right to payment of winnings in a lottery or other game of chance regulated by law other than this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## CHAPTER FIVE FILING

### **Section 501. Acceptance, Refusal, and Effectiveness of Financing Statements: Administration**

(a) The place to file a financing statement to perfect a security interest governed by this title or another record relating to a security interest is the office of the Commission. However, if (1) the collateral is as-extracted collateral or timber to be cut, or (2) the financing statement is filed as a fixture filing, the collateral is goods that are or are to become fixtures, then the place to file the financing statement is the office designated for the filing or recording of a record of a mortgage on the related real property.

(b) A financing statement may be filed before a security agreement is made or a security interest attaches. Receipt by the Commission of a financing statement or other record, in appropriate form by an appropriate method, and tender of the filing fee, constitutes filing, and in those cases the Commission must accept the record. If the Commission refuses the record, it must communicate that fact to the person that presented the record, as well as the reason for refusal and the date and time that the record would have otherwise been filed.

(c) A record in appropriate form and communicated to the Commission by an appropriate method is effective even if:

- (1) it is improperly refused by the Commission, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;
- (2) it is incorrectly indexed by the Commission; or
- (3) it has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading. If a financing statement fails sufficiently to provide the name of the debtor, the name provided does not make the financing statement seriously misleading if a search of the Commission's records under the debtor's correct name using the Commission's standard search logic, if any, would disclose the financing statement.

(d) If information that the Commission's regulations require to be included in a record, but that Section 502(a) does not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that:

- (1) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or



- (2) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

(e) The fee for filing and indexing a record under subsection (a) is Ten Dollars (\$10.00) for the first five (5) pages and One Dollar (\$1.00) for each additional page thereafter. The Commission may set fees for filing and indexing a record under subsection (A) by regulation.

(f) The Commission is charged with administration of Chapter 5 of this title. In accordance with applicable administrative and interpretive rules the Commission shall promulgate and make available the following, in both cases consistent with this title and with tribal and commercial policy:

- (1) regulations to the extent thought necessary for the effective implementation and enforcement of Chapter 5 of this title; and
- (2) an implementation manual providing guidance to persons entering into transactions governed by this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007; amended by TO 2007-17, March 1, 2008.]

## **Section 502. Contents of Records: Authorization: Lapse: Continuation: Termination**

(a) A financing statement is sufficient to perfect a security interest only if it provides the name of the debtor, the name of the secured party or a representative of the secured party, and indicates the collateral covered by the financing statement with a description, whether or not specific, that reasonably identifies the collateral or states that it covers all assets or all personal property. A financing statement or a record of a mortgage that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is sufficient only if in addition it includes such further information as required by Commission regulation. A record that constitutes a termination statement, assigns a record, continues a record, or otherwise amends a record must comply with the regulations of the Commission for such records.

(b) A record may include information other than that required by subsection (a), such as addresses for the debtor and secured party, the characterization of a party as an individual or an organization and, if an organization, the type of organization, and the jurisdiction of organization of the debtor, or a trade name for the debtor, and may use other terms such as “consignor”, “lessor”, or “licensor”, to the extent permitted by and in compliance with the regulations of the Commission, and shall include such other information to the extent required by such regulations.

(c) A validly filed financing statement is effective for five (5) years after the date of filing unless sooner terminated, except as follows:

- (1) If the financing statement correctly indicates that it is filed in connection with a manufactured-home transaction or a public-finance transaction, it is effective for thirty (30) years after the date of filing unless sooner terminated;
- (2) A mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.

(d) A financing statement lapses at the end of the period specified in subsection (c) unless a continuation statement is filed within six (6) months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest unless it is perfected otherwise before lapse, and the security interest is deemed to never have been perfected against a purchaser of the collateral for value.

(e) Upon proper continuation, the effectiveness of a filed financing statement continues for an additional period commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An amendment to a financing statement other than a continuation statement does not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as prescribed in the regulations of the Commission.

(f) Upon the filing of a termination statement, the financing statement to which the termination statement relates ceases to be effective. A secured party or secured party of record shall file, cause to be filed, or send a termination statement in accordance with the regulations promulgated under this title.

(g) Only a person authorized by the debtor in compliance with this subsection or with regulations of the Commission, or a person otherwise designated by those regulations, may file a record that is effective. By signing a security agreement, the debtor authorizes the filing of a financing statement and amendments covering (1) the collateral described in the security agreement and (2) property that becomes collateral under Section 315(a)(2), relating to identifiable proceeds.

(h) If a debtor so changes its name, or an organization its identity or corporate structure, that a filed financing statement becomes seriously misleading, the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless an appropriate filing is made before the expiration of that time. If a security interest continues in collateral transferred by the debtor pursuant to Section 315(a), a filed financing statement with respect to collateral remains effective, even if the secured party knows of or consents to the transfer.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## CHAPTER SIX DEFAULT

### SUBPART 1 DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS

**Section 601. Rights After Default: Judicial Enforcement: Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes**

(a) After default, a secured party has the rights provided in this chapter, the rights and duties related to possession or control of collateral pursuant to Section 204 of this title and, except as otherwise provided in the provisions of this title dealing with waivers and variances of rights and duties pursuant to Section 602, those provided by agreement of the parties. A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, by any available judicial procedure; and
- (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) The rights under subsection (a) are cumulative and may be exercised simultaneously.

(c) Except as otherwise provided in subsection (g) and under the provisions of this title dealing with an unknown debtor or a secondary obligor pursuant to Section 605 of this title, after default, a debtor and an obligor have the rights provided in this chapter and by agreement of the parties.

(d) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest in the collateral; or
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the lien was created.

(e) A sale pursuant to an execution is a foreclosure of the security interest by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this title.

(f) Except as otherwise provided in the provisions of this title dealing with commercially reasonable collection and enforcement pursuant to Section 606(b) of this title, this chapter imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 602. Waiver and Variance of Rights and Duties**

Except as otherwise provided in the provisions of Section 622 of this title dealing with waivers, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this title dealing with:

- (a) rights and duties when collateral is in a secured party's possession pursuant to Section 204;
- (b) requests for an accounting or requests regarding a list of collateral or statement of an account pursuant to Section 207;
- (c) commercially reasonable collection and enforcement pursuant to Section 607(b);
- (d) application of proceeds, deficiency and surplus pursuant to Section 608(a) and 615(C), to the extent that they deal with application or payment of non-cash proceeds of collection, enforcement, or disposition;
- (e) application of proceeds and the like pursuant to Sections 608 and 615(d), to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (f) a secured party's right to take possession after default and limitations thereon pursuant to Section 609, to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;
- (g) commercially reasonable disposition pursuant to Section 610(b), notification before disposition of the collateral pursuant to Section 611, and the contents and form of a notification before disposition of the collateral pursuant to Section 613;
- (h) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue pursuant to Section 615(e);
- (i) explanation of the calculation of a surplus or deficiency pursuant to Section 616;
- (j) acceptance of collateral in satisfaction of obligation pursuant to Section 620;
- (k) right to redeem collateral pursuant to Section 623;
- (l) waivers pursuant to Section 624; and
- (m) the secured party's liability for failure to comply with this title pursuant to Sections 625 and 626.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 603. Agreement on Standards Concerning Rights and Duties**

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions of Section 602 of this title dealing with waiver or variance of rights and duties, if the standards are not manifestly unreasonable.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 604. Procedure if Security Agreement Covers Real Property or Fixtures**

(a) If a security agreement covers both personal and real property, a secured party may proceed:

- (1) under this chapter as to the personal property without prejudicing any rights with respect to the real property; or
- (2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this Chapter do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- (1) under this chapter; or
- (2) in accordance with the rights with respect to real property, in which case the other provisions of this Chapter do not apply.

(c) Subject to the other provisions of this chapter, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 605. Unknown Debtor or Secondary Obligor**

A secured party does not owe a duty based on its status as secured party:

- (a) to a person that is a debtor or obligor, unless the secured party knows:

- (1) that the person is a debtor or obligor;
- (2) the identity of the person; and
- (3) how to communicate with the person; or

(b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (1) that the person is a debtor; and
- (2) the identity of the person.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 606. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 607. Collection and Enforcement by Secured Party**

- (a) If so agreed, and in any event after default, a secured party:
- (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
  - (2) may take any proceeds to which the secured party is entitled under Section 311;
  - (3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral.
- (b) A secured party shall proceed in a commercially reasonable manner if the secured party:
- (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
  - (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (c) A secured party may deduct from the collections made pursuant to subsection (a) reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

(d) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus**

(a) If a security interest secures payment or performance of an obligation, the following rules apply:

- (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 607 in the following order to:
  - (A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
  - (B) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and
  - (C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.
- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).
- (3) A secured party need not apply or pay over for application non-cash proceeds of collection and enforcement under Section 607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application non-cash proceeds shall do so in a commercially reasonable manner.
- (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 609. Secured Party's Limited Right to Take Possession After Default**

(a) Unless otherwise agreed, a secured party has at the time of or after default the powers described in subsection (b), but such powers may be exercised only by an agency of the

Nation as a secured party, or by an agency of the United States as a secured party, or pursuant to judicial process, or with the debtor's consent. Such consent is effective only if expressed after default by means of a separate dated and signed personal statement in the debtor's handwriting, describing the powers to be exercised by the secured party and expressly acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial process.

(b) Under the circumstances of subsection (a) the secured party may:

- (1) take possession of the collateral;
- (2) without removal, render equipment unusable and dispose of collateral on a debtor's premises under Section 610; and

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(d) A secured party acting pursuant to subsection (b)(1) must proceed without breach of the peace.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 610. Disposition of Collateral After Default**

(a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral as provided in Section 623, a disposition of collateral shall take place only on a tribal business day.

(c) A secured party may purchase collateral:

- (1) at a public disposition; or
- (2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition, includes the warranties relating to title, possession, quiet enjoyment, and the like, which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):



- (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
- (2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses words of similar import.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 611. Notification Before Disposition of Collateral**

(a) In this section, “notification date” means the earlier of the date on which:

- (1) a secured party sends to the debtor and any secondary obligor a signed notification of disposition; or
- (2) the debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 610 shall send to the persons specified in subsection (c) a reasonable signed notification of disposition.

(c) To comply with subsection (b), the secured party shall send a signed notification of disposition to:

- (1) the debtor;
- (2) any secondary obligor; and
- (3) if the collateral is other than consumer goods:
  - (A) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;
  - (B) any other secured party or lienholder that, fourteen (14) calendar days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
  - (C) identified the collateral;
  - (D) was indexed under the debtor’s name as of that date; and

- (E) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
- (F) any other secured party that, fourteen (14) calendar days before the notification date, held a security interest in the collateral perfected by compliance with Section 311 or other applicable law.

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

- (1) not later than twenty (20) calendar days or earlier than thirty (30) calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and
- (2) before the notification date, the secured party:
  - (A) did not receive a response to the request for information; or
  - (B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## **Section 612. Timeliness of Notification Before Disposition of Collateral**

(a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) Unless a specific time for sending a notification of disposition is established by the Nation's District Court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:

- (1) in a consumer transaction, twenty (20) calendar days or more before the earliest time of disposition set forth in the notification; or
- (2) in all other transactions, ten (10) calendar days or more before the earliest time of disposition set forth in the notification.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 613. Contents and Form of Notification Before Disposition of Collateral**

The following rules apply to notification before disposition of collateral:

- (a) The contents of a notification of disposition are sufficient if the notification:
  - (1) describes the debtor and the secured party;
  - (2) describes the collateral that is the subject of the intended disposition;
  - (3) states the method of intended disposition;
  - (4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;
  - (5) states the time and place of a public disposition or the time after which any other disposition is to be made;
  - (6) describes any liability for a deficiency by the person receiving the notice; and
  - (7) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.
- (b) Whether the contents of a notification that lacks any of the information specified in subsection (a) are nevertheless sufficient is a question of fact.
- (c) The contents of a notification providing substantially the information specified in subsection (a) are sufficient, even if the notification includes:
  - (1) information not specified by that paragraph; or
  - (2) minor errors that are not seriously misleading.
- (d) A particular phrasing of the notification is not required.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 614. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus**

- (a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 610 in the following order:

- (1) for the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;
- (2) for the satisfaction of obligations secured by the security interest under which the disposition is made;
- (3) for the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
  - (A) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and
  - (B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (4) to a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application non-cash proceeds of disposition under Section 610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application non-cash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

- (1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
- (2) the obligor is liable for any deficiency.

(e) The surplus or deficiency following a disposition is calculated based on the amount of proceeds received, but if the fairness of the amount of those proceeds is placed in issue and the disposition was to a person related to the secured party, the secured party has the burden of establishing that the amount is not significantly below the range of proceeds that are represented by at least the wholesale value of the collateral.

(f) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

- (1) takes the cash proceeds free of the security interest or other lien;
- (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- (3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 616. Explanation of Calculation of Surplus or Deficiency**

(a) In a consumer transaction, a secured party must provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, ten (10) tribal business days before commencing an action for a deficiency.

(b) Each debtor or consumer obligor is entitled, without charge, to one response to a request under this section during any six (6) month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (a). The secured party may require payment of a fee not exceeding Twenty-five Dollars (\$25.00) for each additional response.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 617. Rights of Transferee of Collateral**

(a) A secured party's disposition of collateral after default:

- (1) transfers to a transferee for value all of the debtor's rights in the collateral;
- (2) discharges the security interest under which the disposition is made; and
- (3) discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this title or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

- (1) the debtor's rights in the collateral;
- (2) the security interest under which the disposition is made; and

- (3) any other security interest or other lien.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 618. Rights and Duties of Certain Secondary Obligors**

(a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- (3) is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

- (1) is not a disposition of collateral under Section 610; and
- (2) relieves the secured party of further duties under this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 619. Transfer of Record or Legal Title**

(a) In this section, “transfer statement” means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
- (4) the name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the Commission, the Commission shall:

- (1) accept the transfer statement;
- (2) promptly amend its records to reflect the transfer; and

- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this title and does not of itself relieve the secured party of its duties under this title.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Notification of Proposal; Effect of Acceptance; Compulsory Disposition of Collateral**

(a) Except as provided in subsection (e), a secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial satisfaction of such obligation.

(b) The secured party shall send notice of such proposal to:

- (1) the debtor;
- (2) any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;
- (3) any person that, fourteen (14) calendar days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by means of a financing statement or compliance with other law as provided in Section 311(a) that makes such interest reasonably discoverable; and
- (4) if the proposal is for partial satisfaction of the obligation, any secondary obligor.

(c) The proposal is not effective unless:

- (1) it is covered by subsection (a);
- (2) the debtor consents to the acceptance in a record signed after default;
- (3) no other person specified in subsection (b), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within fourteen (14) tribal business days after notification was sent; and
- (4) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(d) A secured party's acceptance of collateral pursuant to this section:

- (1) discharges the obligation to the extent consented to by the debtor;
- (2) transfers to the secured party all of the debtor's rights in the collateral; and
- (3) discharges the security interest that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this chapter.

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Sections 610 through 616 if:

- (1) sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
- (2) sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

Such disposition shall be made within ninety (90) calendar days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 621. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 622. Reserved**

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 623. Right to Redeem Collateral**

(a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

- (1) fulfillment of all obligations secured by the collateral; and
- (2) the reasonable expenses and attorneys' fees described in Section 615(a)(1), dealing with application of proceeds of disposition.

(c) A redemption may occur at any time before a secured party:

- (1) has collected collateral under Section 607;



- (2) has disposed of collateral or entered into a contract for its disposition under Section 610; or
- (3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 620.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 624. Waiver**

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 611 only by an agreement to that effect entered into and signed after default.

(b) A debtor may waive the right to require disposition of collateral under Section 620(e), which deals with mandatory disposition of consumer goods, only by an agreement to that effect entered into and signed after default.

(c) In a transaction other than a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 623 only by an agreement to that effect entered into and signed after default. In a consumer transaction, a debtor or secondary obligor may not waive such right.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**SUBPART 2**  
**NONCOMPLIANCE WITH THIS TITLE**

**Section 625. Remedies for Secured Party's Failure to Comply with this Title**

(a) If it is established that a secured party is not proceeding in accordance with this title, the Nation's District Court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this title. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 628, which deals with the non-liability and limitations on liability of a secured party and the liability of a secondary obligor:

- (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and
- (2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this

chapter may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) A debtor whose deficiency is eliminated under Section 626, which deals with actions in which a deficiency or surplus is in issue, may recover damages for the loss of any surplus.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover Five Hundred Dollars (\$500.00) in each case from a person that:

- (1) fails to comply with the provisions of Section 205(b) of this title dealing with additional duties of a secured party having control of an investment account;
- (2) fails to comply with the provisions of Section 205(c) of this title dealing with duties of a secured party if an account debtor has been notified of assignment;
- (3) files a record that the person is not entitled to file under Section 502(g);
- (4) fails to file, cause to be filed or send a termination statement as required by Section 502(f);
- (5) fails to comply with the provisions of Section 616(a) of this title dealing with explanations of calculations of surplus or deficiency, and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, Five Hundred Dollars (\$500.00) in each case from a person that, without reasonable cause, fails to comply with a request for an accounting as provided in Section 207. A recipient of a request under Section 207 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 207, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## **Section 626. Action in Which Deficiency or Surplus is in Issue**

(a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply.

- (1) A secured party need not prove compliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
- (2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this chapter.
- (3) Except as otherwise provided in the provisions of Section 628 of this title dealing with non-liability and limitations on liability of a secured party or secondary obligor, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of Section 625(b) of this chapter relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount as stated in the provision of this title dealing with damages for noncompliance, which may be measured by the amount recovered for conversion of collateral.
- (4) For purposes of paragraph (3), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorneys' fees, but the secured party may rebut the presumption.

(b) The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the Nation's District Court the determination of the proper rules in consumer transactions. The Nation's District Court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 627. Determination of Whether Conduct was Commercially Reasonable**

(a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) in the usual manner on any recognized market;
  - (2) at the price current in any recognized market at the time of the disposition;
- or

- (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) in a judicial proceeding;
- (2) by a bona fide creditors' committee;
- (3) by a representative of creditors; or
- (4) by an assignee for the benefit of creditors.

Such approval need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**Section 628. Non-liability and Limitation on Liability of Secured Party; Liability of Secondary Obligor**

(a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this title; and
- (2) the secured party's failure to comply with this title does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:
  - (A) that the person is a debtor or obligor;
  - (B) the identity of the person; and
  - (C) how to communicate with the person; or
- (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
  - (A) that the person is a debtor; and
  - (B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under Section 625(c)(2), which deals with statutory damages where the collateral is consumer goods, for its failure to comply with Section 616, which deals with explanations of calculations of surplus or deficiency.

(e) A secured party is not liable under Section 623(c)(2), which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

#### **Section 629. Attorneys' Fees in Consumer Transactions**

If the secured party's compliance with this title is placed in issue in an action with respect to a consumer transaction, the following rules apply:

(a) If the secured party would have been entitled to attorneys' fees as the prevailing party, a consumer debtor or consumer obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.

(b) In other cases, the Nation's District Court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(c) In determining the attorneys' fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

## **CHAPTER SEVEN MISCELLANEOUS PROVISIONS**

### **Section 701. Effective Date**

This title takes effect immediately upon approval by the General Council.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

### **Section 702. Severability**

If any provision of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

[HISTORY: Enacted by TO 2007-06, June 2, 2007.]

**TITLE 30**  
**GAMING VENDOR/GAMING OPERATOR TRIBAL FEE CODE**  
**INDEX**

<b>TITLE 30 GAMING VENDOR/GAMING OPERATOR TRIBAL FEE CODE INDEX.....</b>	<b>i</b>
<b>TITLE 30 GAMING VENDOR/GAMING OPERATOR TRIBAL FEE CODE .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Authority and Title .....	1
Section 102. Purpose .....	1
Section 103. Definitions .....	1
<b>CHAPTER TWO TRIBAL FEES IMPOSED .....</b>	<b>4</b>
Section 201. Vendor/Operator Tribal Fee Rate.....	4
Section 202. Impact of Vendor/Operator Tribal Fee .....	4
<b>CHAPTER THREE PROCEDURE FOR COLLECTION AND PAYMENT AND RECORDKEEPING .....</b>	<b>5</b>
Section 301. Payment of Vendor/Operator Tribal Fee .....	5
Section 302. Records .....	5
<b>CHAPTER FOUR PENALTIES .....</b>	<b>6</b>
Section 401. Penalties Imposed.....	6
Section 402. Banishment .....	7
Section 403. Cancellation of Licenses.....	7
<b>CHAPTER FIVE POWERS AND RESPONSIBILITIES OF THE SEMINOLE NATION BUSINESS AND CORPORATE REGULATORY COMMISSION.....</b>	<b>8</b>
Section 501. General Powers of the BCR Commission.....	8
Section 502. Enforcement and Regulation.....	8
Section 503. Forms .....	9
Section 504. Records .....	9
Section 505. BCR Gaming Revenue Account .....	9
Section 506. Apportionment .....	9
Section 507. Collection Actions.....	10
<b>CHAPTER SIX ADMINISTRATIVE APPEALS.....</b>	<b>11</b>
Section 601. Administrative Appeals .....	11
Section 602. Limitation on Administrative Appeals .....	11
Section 603. Exhaustion of Administrative Remedies .....	11
Section 604. Suits Against the BCR Commission .....	12
Section 605. Limitation on Suits against the BCR Commission.....	12

Section 606. Refunds .....	12
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**TITLE 30**  
**GAMING VENDOR/GAMING OPERATOR TRIBAL FEE CODE**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Authority and Title**

The Seminole Nation of Oklahoma is empowered to enact this legislation pursuant to Article V of the Constitution of the Seminole Nation of Oklahoma. The Seminole Nation Gaming Vendor/Gaming Operator Tribal Fee Code is hereby adopted and approved by the General Council on March 6, 2004 by Ordinance No. 2004-15 and shall be known as the Seminole Nation Gaming Vendor/Gaming Operator Tribal Fee Code of 2004.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26,  
September 4, 2004.]

**Section 102. Purpose**

The purpose of the Seminole Nation Gaming Vendor/Gaming Operator Tribal Fee Code of 2004 (the "Code") is to promote public health, education and such other services that may contribute to the social and economic advancement of the members of the Seminole Nation of Oklahoma by exercising the specific grant of authority contained in Article V of the Constitution of the Seminole Nation of Oklahoma and by:

- (a) Strengthening the tribal government by licensing and regulating certain business and gaming conduct within the tribal jurisdiction as hereinafter defined;
- (b) Providing financing for the current expenses of the tribal government;
- (c) Provide financing for the expansion of tribal government operations and services in order for the tribal government to efficiently exercise its responsibilities and expand economic growth within the tribal jurisdiction;
- (d) Providing simple, fair and uniform procedures and remedies;
- (e) Providing for the licensing and regulation of gaming vendors and gaming operators;  
and
- (f) Providing for the levy and collection of certain revenue and tribal fees to further the above-mentioned purposes.

[HISTORY: Enacted by TO 2004-15, March 6, 2004.]

**Section 103. Definitions**

As used in this Code, unless the context otherwise requires, these terms shall have the following definitions:

(a) "BCR Commission" shall mean the Seminole Nation Business Corporate and Regulatory Commission as defined by Title 3A of the Code of Laws of the Seminole Nation of Oklahoma.

(b) "Cash Drop" shall mean the total amount of cash removed from drop buckets and/or bill acceptor canisters.

(c) "Drop" shall mean the total amount of cash, coupons and tokens removed from drop buckets and/or bill acceptor canisters.

(d) "Game(s)" shall mean each and every gaming device placed in any casino owned or leased by the Seminole Nation of Oklahoma as further described in Title 15 of the Seminole Nation Public Gaming Act, as amended.

(e) "Gaming" shall mean the act of providing or participating in any game currently approved, or approved in the future by Title 15 of the Seminole Nation Public Gaming Act, as amended.

(f) "Gaming Operator" shall mean each person (not an individual tribal member or SND OC employee acting in their individual capacity) or entity that is licensed by the Seminole Nation of Oklahoma and/or who has management responsibilities, and as part of this responsibility owns, operates or leases games that must be regulated by the NIGC, and who has entered into a gaming operator Contract to do business with the Seminole Nation of Oklahoma and receives revenue from such games, pays amounts to winners playing such games and pays any direct expenses related to the upkeep of such games.

(g) "Gaming Vendor" shall mean each person (not an individual tribal member or SND OC employee acting in their individual capacity) or entity that is licensed by the Seminole Nation of Oklahoma who owns, operates or leases games that have been certified by the NIGC, and who has entered into a gaming vendor Contract to do business with the Seminole Nation of Oklahoma and receives revenue from such games, pays amounts to winners playing such games and pays any direct expenses related to the upkeep of such games, and may include any person or entity as described above who provides contract services to a gaming operator at gaming facilities for more than \$25,000 per year in the gaming facilities and who must have an NIGC license.

(h) "General Council" shall mean the legislative body governing the Seminole Nation of Oklahoma.

(i) "Indian Country" shall mean the area of land included in Indian Country as further defined in the Internal Revenue Code of 1986, as amended for federal income tax purposes.

(j) "License" means the permission by authority of the Seminole Nation to do an act, which without permission would be illegal. It is a permit granted by the Seminole Nation Gaming Commission for a consideration to a person, group, community, firm or corporation to pursue gaming regulation under the jurisdiction of the Seminole Nation.

- (k) "Nation" shall mean the Seminole Nation of Oklahoma.
- (l) "Net Receipts" shall mean the total amounts wagered less payouts/winnings to patrons.
- (m) "SND OC" shall mean the Seminole Nation Division of Commerce, or its successors or assigns, or any other gaming operator charged with the operation of any or all of the Nation's gaming enterprises or gaming facilities.
- (n) "SNGA" shall mean the Seminole Nation Gaming Agency established pursuant to Title 15 of the Seminole Nation Code of Laws.
- (o) "Tribal Jurisdiction" shall mean those areas over which the Nation has jurisdiction, including all tribal lands, dependent Indian communities and trust allotments, as defined in 18 USC §1151, and shall also include any area of Indian Country that may become available to the Nation for purposes of Gaming.
- (p) "Vendor/Operator Tribal Fee" shall mean the tribal fee imposed upon all gaming operators or gaming vendors pursuant to this Chapter.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; amended by TO 2009-13, December 5, 2009; renumbered from Section 1.03 to Section 103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO TRIBAL FEES IMPOSED**

### **Section 201. Vendor/Operator Tribal Fee Rate**

(a) There is hereby levied upon each gaming vendor and gaming operator doing business within the Seminole Nation tribal jurisdiction a vendor/operator tribal fee of five percent (5%) of their portion of all net receipts (after player pay-outs) earned from each game operated within the tribal jurisdiction.

(b) The vendor/operator tribal fee shall automatically attach to and encumber all net receipts as they are collected by each gaming vendor and gaming operator.

- (1) Each gaming vendor and gaming operator shall withhold from all net receipts funds sufficient to pay the fee and shall deposit said funds into a segregated account established in a federally insured banking institution and designated specifically for vendor fee funds to be remitted to the BCR Commission.
- (2) Funds attributable to the vendor fee shall not be commingled with other funds held or possessed by a gaming vendor or gaming operator, and said funds shall not be used to pay any other obligations of the gaming vendor or gaming operator.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; amended by TO 2005-12, September 24, 2005; amended by TO 2009-13, December 5, 2009; renumbered from Section 2.01 to Section 201 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 202. Impact of Vendor/Operator Tribal Fee**

The impact of the vendor/operator tribal fee imposed by this Code is declared to be upon the gaming vendor and gaming operator.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 2.02 to Section 202 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE**

### **PROCEDURE FOR COLLECTION AND PAYMENT AND RECORDKEEPING**

#### **Section 301. Payment of Vendor/Operator Tribal Fee**

No later than the 15th day of each month, each gaming vendor and gaming operator (including, without limitation, SNDOC) shall submit to the BCR Commission their payment as invoiced by the BCR Commission equal to five percent (5%) of their portion of all net receipts (cash drop) collected during the previous month within the tribal jurisdiction. Any payment of vendor/operator tribal fee not timely submitted shall be considered delinquent and shall accrue a penalty pursuant to section 401 of this Code.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; amended by TO 2007-21, December 1, 2007; amended by TO 2009-13, December 5, 2009; renumbered from Section 3.01 to Section 301 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 302. Records**

It shall be the duty of each gaming vendor and gaming operator required to pay vendor/operator tribal fees under this Code to preserve such records of the gross receipts of such gaming activities as the BCR Commission may require and it shall be the duty of each gaming vendor or gaming operator to preserve and maintain for a period of not less than 7 years complete and adequate records, of any nature or kind required, as to the nature and scope of all gaming activities conducted within the tribal jurisdiction. All such records shall be open for review and examination, at any time, by the BCR Commission upon reasonable notice to investigate the nature and character of the business, in order to determine the amount due under the provisions of the Code.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 3.02 to Section 302 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER FOUR PENALTIES**

### **Section 401. Penalties Imposed**

(a) Any gaming vendor or gaming operator who shall fail to pay the vendor/operator tribal fees imposed, or to maintain the records required by this Code shall be liable for the full amount of the vendor/operator tribal fees imposed, plus a penalty interest rate in the amount of ten percent (10%) per annum of the amount due and determined by the BCR Commission to be delinquent. Willful failure to collect or pay over vendor/operator tribal fees imposed by this Code shall make the gaming vendor or gaming operator liable for an additional penalty of 100% of the vendor/operator tribal fees due. In the case of a failure to maintain the records required by this Code, a flat charge of Two Thousand Five Hundred Dollars (\$2,500.00) per violation shall be imposed.

(b) In addition to the fines and penalties outlined above, a gaming vendor's or gaming operator's failure to timely remit the fees required by this Code shall be subject to penal action as follows:

- (1) Upon the first such violation, the BCR Commission shall serve the gaming vendor or gaming operator with telephonic or written notice.
  - (A) The gaming vendor or gaming operator shall have two (2) business days in which to cure the failure to remit.
  - (B) The BCR Commission shall report to the SNGA a failure to cure the deficiency within the cure period.
- (2) Upon the second such violation in any six-month period, the gaming operator or gaming vendor shall not be permitted the opportunity to cure. Instead, the BCR Commission shall immediately report such failure to the SNGA.

(c) The SNGA may, in the exercise of the regulatory authority vested by Title 15, investigate all reports from the BCR Commission concerning failure to remit required fees and failures to maintain records required by this Code.

- (1) The SNGA retains its authority under Title 15 to ensure that revenues from the operation of the Seminole Nation's regulated gaming activities are used only for authorized purposes and the authority to resolve remittance disputes between the BCR Commission and any gaming operator or gaming vendor.
- (2) Upon review by the SNGA, any gaming operator or gaming vendor who has failed to comply with the remittance or record keeping requirements of this Code shall be deemed to have violated Title 15, §§ 301(a)(1) and (4) and shall be subject to the penalties available under Title 15, § 301(d),

including possible license revocation pursuant to Title 15, §§ 203(a)(15) and (e).

- (3) Decisions of the SNGA shall be appealable to the Seminole Nation Gaming Office of Appeals pursuant to the provisions of Title 15, § 305(d).

(d) If the SNGA fails, refuses, declines or is otherwise unable to initiate an investigation into any failure to remit fees imposed by this Code within forty-five (45) days from the receipt of such referral, the BCR Commission may pursue other remedial action as otherwise provided in this Code.

(e) In the case of fraud, embezzlement or theft, such gaming vendor or employee shall also be subject to all criminal penalties applicable under the laws of the Nation and the laws of the United States of America.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; amended by TO 2009-13, December 5, 2009; renumbered from Section 4.01 to Section 401 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 402. Banishment**

Any gaming vendor or gaming operator who violates any provision of this Code for the purpose of evading payment of fees imposed by this Code in addition to any penalties imposed by this Code may be banished and excluded from carrying on any business within the tribal jurisdiction for a period not to exceed 5 years, by order of the General Council.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; renumbered from Section 4.02 to Section 402 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 403. Cancellation of Licenses**

Any gaming vendor or gaming operator who is banished and excluded from the tribal jurisdiction shall have all licenses, permits and other authority to carry on business within the tribal jurisdiction cancelled by operation of law.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; renumbered from Section 4.03 to Section 403 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**CHAPTER FIVE**  
**POWERS AND RESPONSIBILITIES OF THE SEMINOLE NATION BUSINESS AND**  
**CORPORATE REGULATORY COMMISSION**

**Section 501. General Powers of the BCR Commission**

The BCR Commission shall generally be charged with the administration and enforcement of the Code. Incidental to the administration and enforcement of the Code, the BCR Commission shall have the power to:

- (a) Assess, collect and issue receipts for such vendor/operator tribal fees, penalties, interest and other charges as are imposed by this Code and to bring actions on behalf of the Nation in Seminole Nation Court or the United States District Court for the Eastern District of Oklahoma for the collection of vendor/operator tribal fees, penalties, interest and other charges and the enforcement of the Code;
- (b) Administer oaths, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records or papers of any gaming vendor or gaming operator relating to the enforcement of the Code;
- (c) Make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any gaming vendor or gaming operator, upon reasonable notice, during normal business hours, or at any other time agreed to by the gaming vendor or gaming operator, or at any time, pursuant to a search warrant issued by the Seminole Nation Court or the United States District Court for the Eastern District of Oklahoma.
- (d) Examine, under oath, either orally or in writing any gaming vendor or gaming operator or any agent, officer, or employee of any gaming vendor or gaming operator, or any other witness in respect to any matter relevant to the Code;
- (e) Exercise all other authority delegated or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of the Code.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 5.01 to Section 501 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203 subsections (a) and (c) modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

**Section 502. Enforcement and Regulation**

The BCR Commission is hereby authorized to enforce the provisions of this Code and to promulgate and enforce any reasonable rules and regulations with respect thereto. The BCR Commission may also prescribe, promulgate and enforce all necessary rules and regulations for the purpose of making and filing reports required under the Nation's Code of Laws and such



rules and regulations as may be necessary to ascertain and compute the vendor/operator tribal fees, penalties, interest and other charges payable by any gaming vendor or gaming operator under the Nation's Code of Laws; and may, at all times, exercise such authority as may be necessary to administer and enforce each and every provision of the Code.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 5.02 to Section 502 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 503. Forms**

The BCR Commission shall prepare and make available such standard forms as are necessary to carry out the functions provided for by this Code.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; renumbered from Section 5.03 to Section 503 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 504. Records**

The BCR Commission shall keep a record of all its official acts and shall prepare copies of all rules, regulations and decisions and orders made by it.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; renumbered from Section 5.04 to Section 504 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 505. BCR Gaming Revenue Account**

(a) There is hereby authorized and directed to be established an account in a federally insured banking institution to be known as the BCR Gaming Revenue Account.

(b) All vendor/operator tribal fees, penalties, interest and other charges, or other monies collected by the BCR Commission in administration and enforcement of this Code shall be deposited into the BCR Gaming Revenue Account to be dispensed under the authority of the General Council. Such funds shall be devoted to the health, welfare, education and other governmental purposes of the Nation.

(c) The BCR Gaming Revenue Account shall be an interest-bearing account and the funds therein may be invested and reinvested as may be approved by the General Council.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 5.05 to Section 505 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 506. Apportionment**

(a) Thirty percent (30%) of the vendor/operator tribal fees collected and deposited into the BCR Gaming Revenue Account shall be used as either matching funds for any grant or other funding award or as direct funding for the development, construction and operation of a Tribal facility within the tribal jurisdiction for the tribal members. Such funds shall be appropriated by a duly approved General Council Resolution and included in the General Fund budget as a line item entitled "Tribal Government Facility" under the subheading "Special Appropriations." No appropriation shall be authorized until the funds accumulated under this subsection either exceed Two Hundred Thousand Dollars (\$200,000) or equal the minimum amount required for any matching funds for the Tribal facility, whichever occurs first.

(b) Seventy percent (70%) of the vendor/operator tribal fees collected, together with any penalties, interest and other charges, shall be deposited into the BCR Gaming Revenue Account and shall be reserved for general governmental purposes, functions, programs or services for tribal members as authorized and appropriated by a duly approved General Council Resolution.

[HISTORY: Enacted by TO 2004-26, September 4, 2004; amended by TO 2015-03, June 6, 2015; renumbered from Section 5.06 to Section 506 on and subsection numbering scheme modified August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 507. Collection Actions**

The BCR Commission is hereby authorized to bring any necessary action in the Seminole Nation Court or the United States District Court for the Eastern District of Oklahoma for the collection of any vendor/operator tribal fees, penalties, interest or other charges assessed and unpaid. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment. Any civil remedies, including but not limited to garnishment, attachment, and execution shall be available for collection of monies due to the Nation. The BCR Commission may request legal counsel to bring any necessary action for the collection of any vendor/operator tribal fees, penalties, interest or other charges assessed and unpaid in the Seminole Nation Court or the United States District Court for the Eastern District of Oklahoma upon authority of the General Council.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 5.07 to Section 507 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER SIX ADMINISTRATIVE APPEALS**

### **Section 601. Administrative Appeals**

Any gaming vendor or gaming operator against whom the BCR Commission has assessed vendor/operator tribal fees, penalties, interest or other charges pursuant to this Code, or who has paid under written protest any vendor/operator tribal fees, penalties, interest, or other charges assessed by the BCR Commission who believes such vendor/operator tribal fees, penalties, interest or other charges to be wrongfully assessed or collected, may appeal in writing for a full hearing before the BCR Commission under such other rules and regulations as the BCR Commission may prescribe.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 6.01 to Section 601 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 602. Limitation on Administrative Appeals**

Any administrative appeal as provided for in this Code must be initiated by filing a written request for a hearing with the BCR Commission within 90 days of the assessment or payment of vendor/operator tribal fees, penalties, interest or other charges in controversy, provided that failure to file an administrative appeal shall not prevent the gaming vendor or gaming operator from defending any collection action by the BCR Commission in the Seminole Nation Court or the United States District Court for the Eastern District of Oklahoma.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 6.02 to Section 602 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

### **Section 603. Exhaustion of Administrative Remedies**

Administrative remedies shall be deemed exhausted:

- (a) Upon a final decision of an appeal pursuant to this Code;
- (b) If the BCR Commission shall fail to schedule and hold a hearing on the merits of the administrative appeal within 90 days after receipt of a written request for a hearing unless delay is requested or approved by the gaming vendor or gaming operator; or
- (c) If the BCR Commission shall fail to issue a written decision on the appeal within 30 days of the hearing on the merits of the administrative appeal.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; renumbered from Section 6.03 to Section 603 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 604. Suits Against the BCR Commission**

The BCR Commission, as a governmental agency of the Nation, its members and employees shall be immune from any suit in law or equity while performing their lawful duties within the scope of the authority delegated to them, provided, that any gaming vendor or gaming operator against whom the BCR Commission has assessed vendor/operator tribal fees, penalties, interest or other charges or who has paid under written protest any vendor/operator tribal fees, penalties, interest or other charges may bring an action in the Seminole Nation Court after exhaustion of administrative remedies, to enjoin the BCR Commission from collecting any vendor/operator tribal fees, penalties, interest or other charges assessed, or for the recovery of any vendor/operator tribal fees, penalties, interest or other charges paid under written protest which the Seminole Nation Court finally determines to have been wrongfully assessed or collected.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 6.04 to Section 604 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 605. Limitation on Suits against the BCR Commission**

(a) Any suit against the BCR Commission authorized under this Code must be commenced by filing a petition in the Seminole Nation Court within 30 days after the date of exhaustion of administrative remedies.

(b) In no event shall the Seminole Nation Court be authorized to award or order the payment of damages or to fashion a remedy except to enjoin the collection or order the return of the amount of the vendor/operator tribal fees, penalties, interest or other charges in controversy unless an additional remedy is specifically provided by this Code.

(c) All amounts found to be wrongfully collected and refundable shall earn simple interest at a rate of five percent (5%) per annum until refunded.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 6.05 to Section 605 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 606. Refunds**

(a) Whenever any gaming vendor or gaming operator shall establish in any administrative hearing or the Seminole Nation Court proceeding that such person or entity is entitled to a refund of any vendor/operator tribal fees, penalties, interest or other charges previously paid, the BCR Commission shall immediately cause a certified copy of the order and

transcript of the order and transcript of any administrative action or judgment of the Seminole Nation Court to be filed.

(b) Upon receipt of such order and transcript or judgment of the Seminole Nation Court, the BCR Commission shall appropriate from the Gaming Revenue Account such amounts as may be necessary to pay such refund from otherwise unappropriated money. The BCR Commission shall thereafter issue a refund.

[HISTORY: Enacted by TO 2004-15, March 6, 2004; amended by TO 2004-26, September 4, 2004; renumbered from Section 6.06 to Section 606 and subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; modified on December 22, 2016 to remove reference to CFR Court pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 31  
SEMINOLE NATION ROADS COMMITTEE  
TRANSPORTATION POLICY AND PROCEDURES  
INDEX**

<b>TITLE 31 SEMINOLE NATION ROADS COMMITTEE TRANSPORTATION POLICY AND PROCEDURES INDEX .....</b>	<b>i</b>
<b>TITLE 31 SEMINOLE NATION ROADS COMMITTEE TRANSPORTATION POLICY &amp; PROCEDURE.....</b>	<b>1</b>
<b>CHAPTER ONE TITLE, DEFINITIONS, FINDINGS, PURPOSE, COMMITTEE, OFFICERS .....</b>	<b>1</b>
Section 101. Title .....	1
Section 102. Definitions .....	1
Section 103. Findings .....	1
Section 104. Purpose .....	2
Section 105. Seminole Nation Roads Committee .....	3
Section 106. Officers .....	6
<b>CHAPTER TWO MEETINGS, FACSIMILE SIGNATURES, QUORUM, CONDUCT OF BUSINESS.....</b>	<b>9</b>
Section 201. Meetings .....	9
Section 202. Facsimile Signatures.....	9
Section 203. Quorum.....	9
Section 204. Conduct of Business.....	10
<b>CHAPTER THREE NOTICES .....</b>	<b>11</b>
Section 301. General.....	11
Section 302. Notice .....	11

**TITLE 31**  
**SEMINOLE NATION ROADS COMMITTEE**  
**TRANSPORTATION POLICY & PROCEDURE**

**CHAPTER ONE**  
**TITLE, DEFINITIONS, FINDINGS, PURPOSE,**  
**COMMITTEE, OFFICERS**

**Section 101. Title**

This document shall be entitled the Seminole Nation Roads Committee Policy and Procedure for overseeing the Seminole Nation Transportation Department.

[HISTORY: Enacted by TO 2007-19, December 1, 2007.]

**Section 102. Definitions**

Unless the context clearly requires otherwise, in this Title:

- (a) “Committee” refers to the Seminole Nation Roads Committee (RC).
- (b) “Members” means the person or persons serving on the Committee.
- (c) “Sections” refers to the sections of this Title.
- (d) “Offices” refers to duties and functions associated with particular titles of service for the Committee, being “Chairman,” Vice-Chairman,” and “Secretary.”
- (e) “Officers” refers to persons who are members of the Committee who also serve with the title or titles of office on the Committee.
- (f) “Department” refers to the Seminole Nation Transportation Department.
- (g) “Agent” refers to one who is empowered to act for the Committee.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 103. Findings**

It is hereby declared and found:

- (a) There exists a need for the development and improvement of roads within the jurisdiction of the Seminole Nation of Oklahoma;

(b) The establishment of a transportation advisory body (Roads Committee) is important to the development of an Indian Reservation Roads program serving the interests of the Seminole Nation;

(c) There has been demonstrated a need for the Committee to be able to provide oversight for the Transportation Department;

(d) The Committee shall not enter into P.L. 93-638 Contracts that are entered into for the Nation by the Principal Chief; and

(e) The Committee is the body reviewing and acting on behalf of the Nation in the transportation and tribal roads areas as provided under its organic legislation and through these policies and procedures.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 104. Purpose**

The Committee Policy and Procedure is hereby enacted for the purpose of:

(a) Clearly defining the Committee's duties and functions, and to clarify the role of the Committee:

(1) In acting on behalf of the Nation when approving various roads-related documents, not including P.L. 93-638 Contracts that are entered into by the Principal Chief;

(2) Reviewing, advising and recommending to the Seminole Nation Tribal Council opportunities and issues regarding transportation;

(b) Expanding the usable mileage of the Seminole Nation's Indian Reservation Road (IRR) system, and the Inventory of the IRR system;

(c) Adopting:

(1) The Tribal Transportation Improvement Program (TTIP) (an annual document with a three-to-five-year horizon); and

(2) The Long-Range Transportation Plan (LRTP) (with a twenty-year horizon, redone every three-to-five years);

(d) Strategizing to attract industry and commerce to the Seminole Nation by programming certain improvements needed for access and attractiveness of commercial and industrial development sites that promote economic vitality of the Nation.



[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 105. Seminole Nation Roads Committee**

- (a) General Powers and Responsibilities.
  - (1) Includes the business and affairs of the Committee and managing the Department's program for the Seminole Nation;
  - (2) To establish procedures for the Committee and Department that are approved by the General Council and consistent with the Constitution and the laws of the Seminole Nation;
  - (3) To establish and use a Benefit/Cost Rating criteria to select and prioritize projects for the Indian Reservation Road program;
  - (4) To ensure the Nation's compliance with Federal and Tribal laws governing the Indian Reservation Roads System;
  - (5) To make recommendations to the General Council of the Seminole Nation regarding proposed legislative action to ensure such compliance;
  - (6) To maintain or cause to be maintained the Indian Reservation Road Inventory;
  - (7) To coordinate with those government entities that have a Memorandum of Understanding with the Seminole Nation (State, County, City or Town) for the development and maintenance of the Nation's TTIP and IRR Inventory;
  - (8) To act on behalf of the Nation and have the authority to decide matters pertaining to the Department (except the Committee shall not enter into a P.L. 93-638 contract); and
  - (9) Shall exercise such other duties as shall be consistent with the general oversight of the Department.
  - (10) Notwithstanding any provision of this Policy and Procedure to the contrary, the Committee may delegate the powers or duties of any officer to any other officer or agent.
- (b) Appointments.
  - (1) The Principal Chief shall appoint a Committee consisting of five (5) members of the Seminole Nation of Oklahoma, subject to the approval of

the General Council, as provided in the Constitution of the Seminole Nation.

(c) Qualifications.

- (1) Committee members shall be individuals with substantial education, experience, training, and/or knowledge of the IRR Program, or a related field; and shall be subject to the following order of appointment preference:
  - (1) an enrolled member of the Seminole Nation of Oklahoma;
  - (2) an enrolled member of any federally-recognized Native American Tribe; and then (3) any non-Indian.
- (2) No member of the Committee shall be an employee of the Seminole Nation while serving on the Committee.

(d) Tenure.

- (1) Members shall serve for a term of four (4) years except for the current members of the Committee.
- (2) One of the current Committee member's term shall end on October 1, 2009. The second member's term shall end on October 1, 2010. The third member's term shall end on October 1, 2011. The fourth- and fifth-member's term shall end on October 1, 2012. The Committee shall determine the end of term of each officer and member.
- (3) Any member shall be eligible for reappointment regardless of whether or not some or the remainder of the Committee membership is reappointed. A member who is not reappointed shall serve the remainder of his or her term until a successor is appointed and is confirmed by the General Council.
- (4) Each member already approved and serving on the Committee as of the date of enactment of this Policy and Procedure shall not require reconfirmation to continue in office, until the end of his or her current term. If they are reappointed for terms beginning on October 1, 2009, 2010, 2011 or 2012, their appointments will require confirmation by the General Council.
- (5) Future member appointments shall be in annual intervals.

(e) Conflict of Interest.

- (1) An employee of the Seminole Nation is not eligible to be a member of the Committee.
- (2) No member of the Committee shall participate in the selection of a project that is located within two miles of their residence or business interest.

(f) Removal of Members.

- (1) No member shall be removed except for cause, and shall be removed by a majority vote of the Committee when such removal is affirmed by a vote of the General Council and approved by Principal Chief.
- (2) The Principal Chief may at any time remove a Member of the Committee for misfeasance, nonfeasance, or malfeasance in office, subject to the approval of the General Council. If removed, said person shall have the right to appeal to the General Council. The General Council vote will be final.

(g) Vacancies.

- (1) Upon any vacancy in any office because of death, resignation, removal, disqualification, or any other cause that this Policy and Procedure prescribes for the regular appointment to such office, the Principal Chief, subject to the approval of the General Council, shall fill the vacancy occurring in the Committee, whether by an increase in the number of members or otherwise.
- (2) No vacancy in the membership of the Committee shall impair the rights of a quorum to exercise all the rights and perform all the duties of the Committee.

(h) Resignation(s).

- (1) Any member may resign at any time by giving written notice to the Committee, the Secretary of the Committee, or to the Principal Chief.
- (2) Any resignation shall take effect upon receipt or at the time specified in the resignation letter or notice.
- (3) Unless the letter or notice states otherwise, the effectiveness of the resignation shall not depend on its acceptance.

(i) Compensation. Compensation shall be as provided in section 602 of Title 16 of the Seminole Nation of Oklahoma Code of Laws.

(j) Legal Counsel. The Committee may establish qualifications, duties, and compensation for such Legal Counsel as it may require for legal representation of the Committee. Said Legal Counsel may be suspended or dismissed at any time by the Committee with or without cause.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; amended by TO 2011-14, October 29, 2011; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **Section 106. Officers**

(a) Officers of the Committee. The officers of the Committee shall consist of a Chairman, Vice-Chairman, Secretary, and other agents as the Committee may designate from time to time.

(b) Election and Term.

- (1) The Committee shall elect officers to serve as Chairman, Vice-Chairman, and Secretary.
- (2) Each officer shall serve for a term of four (4) years, or until his or her successor is appointed and accepts the appointment.
- (3) Members shall elect officers at their regular meeting.

(c) Removal of Officers or Agents.

- (1) The Committee may take away the title and duties of any member, officer or agent the Committee has designated at any time, with cause, by majority vote.
- (2) The member, officer or agent being considered for removal shall have the opportunity to be heard before the Committee votes.

(d) Resignation of Officers or Agents.

- (1) Any officer or agent elected or appointed by the Committee may resign from their particular office at any time by giving written notice to the Committee, the Chairman of the Committee, the Vice-Chairman, or the Secretary.
- (2) Any such resignation shall take effect at the date of the receipt of such notice or at any later time so specified.
- (3) Unless the notice states otherwise, the effectiveness of the resignation shall not depend on its acceptance.

(e) The Chairman.

- (1) The Chairman shall be the principal executive officer of the Committee and, subject to the Committee's control
- (2) The Chairman shall supervise and control all of the business and affairs of the Committee.
- (3) The Chairman will preside at all meetings of the Committee that he or she attends, and shall perform such other duties as the Committee may direct.

- (4) In general, the Chairman shall perform all duties incident to the office of the Chairman, and such other duties as the Committee may prescribe, consistent with this Policy and Procedure, the Constitution and laws of the Seminole Nation.
  - (5) When present and presiding, the Chairman shall be empowered to sign correspondence or other paperwork pertaining to the Department which the Committee has authorized an officer or agent of the Committee to execute.
  - (6) The Chairman shall not sign any instrument that the law, this Policy and Procedure, or the Committee expressly requires some other officer or agent of the Committee to sign and execute.
- (f) Vice-Chairman.
  - (1) The Vice-Chairman of the Committee shall assist the Chairman when called upon to do so.
  - (2) In the absence of the Chairman, or in the event of his or her death, inability or refusal to act, the Vice-Chairmen shall perform the duties of the Chairman.
  - (3) When presiding, the Vice-Chairmen shall have the rights, privileges, duties, restrictions, and responsibilities of the Chairman.
  - (4) The Vice-Chairman shall perform such other duties as the Chairman or the Committee may assign to him or her from time to time.
- (g) Secretary.
  - (1) The secretary shall keep the minutes of the meetings of the Committee;
  - (2) Give all notices which this Policy and Procedure or the law requires;
  - (3) Serve as a custodian of the records;
  - (4) Maintain a register of the address of each member; and
  - (5) Perform all duties that the Chairman or the Committee may assign him or her from time to time.
- (h) Delegation.
  - (1) Notwithstanding any provision of this Policy and Procedure to the contrary, the Committee may delegate or revoke the powers or duties of any officer to any other officer or agent by majority vote.

(i) Vacancies. The Committee may fill a vacancy of an officer or agent the Committee has removed at any time, with cause, by majority vote.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO**

### **MEETINGS, FACSIMILE SIGNATURES, QUORUM, CONDUCT OF BUSINESS**

#### **Section 201. Meetings**

(a) Regular.

- (1) The Committee may hold regular meetings at such places, dates, and times, as the Committee shall annually establish by resolution. Said resolution shall be filed with the General Council, the Principal Chief, and the Committee Secretary, and shall also be posted at the Administrative Complex building and at the Tribal Council House.
- (2) The Committee may hold meetings by means of telephone conference or similar telecommunication equipment that enable all persons participating in the meeting to hear each other. Such participation shall constitute presence in person at such meeting.

(b) Special.

The Chairman of the Committee, the Vice-Chairman, or a quorum of the members then in office may call a special meeting of the Committee. The person or persons authorized to call special meetings of the Committee may fix any place, either in or out of the jurisdiction of the Seminole Nation for the meeting if provided by notice as prescribed in Chapter 3.

(c) Holidays.

If any day fixed for a meeting falls on a legal holiday, the Committee shall hold the meeting at the same place and time on the next succeeding business day.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 202. Facsimile Signatures**

The use of facsimile signatures is authorized when utilizing telecommunication media. The Committee may use the facsimile signatures of any officer or officers, agent or agents, as the Committee may authorize.

[HISTORY: Enacted by TO 2007-19, December 1, 2007.]

#### **Section 203. Quorum**

Three (3) members present shall constitute a quorum for all purposes at any meeting of the Committee. In the absence of a quorum, a majority of the members present at any meeting may

adjourn the meeting to another place, date, or time and shall provide notice as prescribed in Chapter 3.

[HISTORY: Enacted by TO 2007-19, December 1, 2007.]

**Section 204. Conduct of Business**

(a) The Committee shall transact business in such order and manner as the Committee may determine, or by the following manner:

- (1) Call to order by the Chairman;
- (2) Roll call;
- (3) Ascertainment of a quorum;
- (4) Reading of minutes of the last meeting;
- (5) Adoption of the minutes by a vote of acclamation or common consent;
- (6) Unfinished (old) business;
- (7) New business;
- (8) Adjournment.

(b) Except as the law requires, the Committee shall determine all matters by the vote of a majority of the members present, or simultaneously linked to the meeting site by telecommunications, as provided section 201 of this Title.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **CHAPTER THREE**

### **NOTICES**

#### **Section 301. General**

Whenever this Policy and Procedure requires notice to any member, officer or agent, such notice does not mean personal notice. A person may give effective notice under the provisions of this Policy and Procedure in every case by U.S. Mail. Unless this Policy and Procedure provides to the contrary, the time when the person sends notice shall constitute the time of giving the notice.

[HISTORY: Enacted by TO 2007-19, December 1, 2007.]

#### **Section 302. Notice**

(a) Notice of Regular Meetings. Regular meetings need not be noticed, when these regularly scheduled meetings have been the subject of an annual resolution providing and listing the time, date, and place of the specific regular meetings, and which resolution has been posted at the Administration Complex building, and at the Tribal Council House, during the month of January for that particular year.

(b) Absence of a Quorum. The members adjourning a meeting of the Committee due to a lack of quorum shall give written notice to each other member of the time, place, date and purpose of the meeting not less than four business days if by mail, telegraph or fax machine.

(c) Notice of Special Meetings. The person or persons calling a special meeting of the Committee shall give written notice to each member of the time, place, date and purpose of the meeting not less than four business days if by mail, telegraph or fax machine.

- (1) A Member may waive notice of any special meeting;
- (2) Any meeting shall constitute a legal meeting without notice if:
  - (A) All the members are present, or
  - (B) Those not present sign (either before or after the meeting):
    - (i) A written waiver of notice,
    - (ii) A consent to such meeting, or
    - (iii) An approval of the minutes of the meeting.
- (3) A notice or waiver of notice shall specify the purposes of the meeting, or the business that the Committee will transact at the meeting.

[HISTORY: Enacted by TO 2007-19, December 1, 2007; subsection numbering scheme modified on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**TITLE 32  
VETERANS  
INDEX**

<b>TITLE 32 VETERANS INDEX.....</b>	<b>i</b>
<b>TITLE 32 VETERANS .....</b>	<b>1</b>
<b>CHAPTER ONE DEPARTMENT OF VETERANS AFFAIRS.....</b>	<b>1</b>
Section 101. Veterans Policy .....	1
Section 102. Department of Veterans Affairs; Qualification; Appointment; Removal.....	1
Section 103. Term .....	2
Section 104. Duties.....	2
Section 105. Seminole Veterans Affairs Committee: Compensation.....	3
Section 106. Seminole Veterans Affairs Committee Governed by General Council.....	3
Section 107. Seminole Nation Cemetery .....	3

## **TITLE 32 VETERANS**

### **CHAPTER ONE DEPARTMENT OF VETERANS AFFAIRS**

#### **Section 101. Veterans Policy**

It is the policy of the Seminole Nation of Oklahoma to honor the cultural tradition of military service in the highest regard. The Seminole Nation shall endeavor to meet the needs of its Veterans and honor their service to this Country and the Seminole Nation. The Seminole Nation Veterans Affairs Office is to educate and assist the Seminole Nation community veterans and their dependents without regard to tribal affiliation, degree of Indian blood, Branch of Armed Forces or combat status in obtaining all benefits to which they are entitled, both federal and state, either by direct contact or through the assistance of the Seminole County and Tribal Veterans Service Officer (TVSO).

[History: Enacted by TO 2012-10, September 1, 2012; renumbered from Section 100 to Section 101 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 102. Department of Veterans Affairs: Qualification: Appointment: Removal**

(a) The Seminole Nation of Oklahoma shall officially establish a Department of Veterans Affairs, which shall include a Director and any other staff the Nation may hire, who shall report to the Executive Department; and

(b) The Seminole Nation Department of Veterans Affairs shall also have advisory oversight from a Seminole Veterans Affairs Committee charged and empowered with the duties and responsibilities listed in section 104 of Title 32; and

- (c) The Seminole Veterans Affairs Committee shall be a five (5) member Committee.
- (1) Members of the Seminole Veterans Affairs Committee shall be veterans, or currently on active military status, or reserve military status, or retired military status; and
  - (2) Committee members shall be appointed with the following order of preference: (1) members of the Nation, (2) members of other federally-recognized Tribes; and (3) non-Natives.
  - (3) The Principal Chief shall appoint the members of the Seminole Veterans Affairs Committee, subject to confirmation by the General Council.
  - (4) At least three (3) official Committee members shall be in attendance in order to establish a quorum.

(d) The first meeting of the Seminole Veterans Affairs Committee shall be after at least three (3) appointments are confirmed by the General Council. At the first meeting of the Seminole Veterans Affairs Committee, the members shall select within their membership a Chairman, Vice-Chairman and Recording Secretary.

(e) The Principal Chief of the Seminole Nation of Oklahoma may at any time recall the appointment of any member of the Seminole Veterans Affairs Committee for good cause shown, subject to the approval of a majority vote of the Council.

(f) Voting on agenda items by the Seminole Veterans Affairs Committee shall be by roll call vote and shall be recorded by the Recording Secretary.

(g) The Seminole Veterans Affairs Committee shall enact bylaws to govern parliamentary procedures and meeting notices. The bylaws shall be submitted to the General Council Secretary. Meeting minutes shall be promptly submitted to the Council Secretary.

[History: Enacted by TO 2012-10, September 1, 2012; renumbered from Section 101 to Section 402 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 103. Term**

The term of Seminole Veterans Affairs Committee members shall be four (4) years from the date of appointment by the Chief and confirmation of the General Council.

[History: Enacted by TO 2012-10, September 1, 2012; renumbered from Section 102 to Section 103 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

### **Section 104. Duties**

The duties of the Seminole Veterans Affairs Committee shall include the following:

(a) Assisting in the development of short- and long-range advisory goals for the immediate and future needs of the Seminole Nation Department of Veterans Affairs consistent with the identification of needs and delivery of services to Seminole veterans;

(b) Providing insight, advice, and opinions about veteran's services to both the General Council and the Seminole Department of Veterans Affairs;

(c) Making recommendations for implementation of any long- and short-range plans and goals, including identification and all Seminole veterans;

(d) Making suggestions and recommendations to the Veterans Affairs Director and/or staff hired by the Nation; and,

(e) Overseeing the operation of the Nation's Cemetery.

[History: Enacted by TO 2012-10, September 1, 2012; renumbered from Section 103 to Section 104 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO 2016-03, September 3, 2016.]

**Section 105. Seminole Veterans Affairs Committee: Compensation**

Title 16, section 602, which provides that all members of Committees, Boards and Task Forces of the Seminole Nation receive a stipend of Fifty Dollars (\$50.00), shall apply to persons appointed to the Committee who attend the meetings of Seminole Veterans Affairs Committee. If the amount paid to members of Committees, Boards and Task Forces of the Seminole Nation is modified in Title 16, section 602, the modifications shall also apply to the Seminole Veterans Affairs Committee.

[History: Enacted by TO 2012-10, September 1, 2012; renumbered from Section 104 to Section 105 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 106. Seminole Veterans Affairs Committee Governed by General Council**

(a) It is to be understood and directed that the Seminole Veterans Affairs Committee will be extended the fullest and best cooperation of all concerned while in the performance of its duties and will be working in the best interests of the citizens of the Seminole Nation of Oklahoma.

(b) The Seminole Veterans Affairs Committee is governed by the General Council and shall submit an annual report of its activities, findings and proposals for review at the Quarterly Meeting of the General Council held the first Saturday of September each year.

[History: Enacted by TO 2012-10, September 1, 2012; renumbered from Section 105 to Section 106 on August 26, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 107. Seminole Nation Cemetery**

As of the effective date of this provision, the Cemetery Committee established by the General Council in 2009 shall be dissolved and responsibility for oversight of the operation of the Nation's Cemetery shall immediately transfer to the Veterans Affairs Committee. The rules and regulations for the operation of the Nation's Cemetery, passed by the Cemetery Committee and approved by the General Council in 2012, shall remain in place, excepting those provisions that relate specifically and solely to the composition, selection, and status of the Cemetery Committee, until such time as the Veterans Affairs Committee submits revised rules and regulations to the General Council and gains General Council approval of said revised rules and regulations.

[History: Enacted by TO 2016-03, September 3, 2016.]

**TITLE 33**  
**OIL & GAS SEVERANCE CODE**  
**INDEX**

<b>TITLE 33 OIL &amp; GAS SEVERANCE CODE INDEX.....</b>	<b>i</b>
<b>TITLE 33 OIL &amp; GAS SEVERANCE CODE .....</b>	<b>1</b>
<b>CHAPTER ONE GENERAL PROVISIONS.....</b>	<b>1</b>
Section 101. Short Title .....	1
Section 102. Findings .....	1
Section 103. Purpose; Application of Laws; Sovereign Immunity .....	2
Section 104. Severability .....	3
Section 105. Definitions .....	3
Section 106. Authority .....	6
<b>CHAPTER TWO SEVERANCE FEE AND LIABILITY; PIPELINES .....</b>	<b>8</b>
<b>SUBCHAPTER A SEVERANCE FEE AND LIABILITY .....</b>	<b>8</b>
Section 201. Oil and Gas Severance Fee Imposed .....	8
Section 202. Liability for Severance Fee .....	8
Section 203. Rate of Fee; Due Date of Fee; Payment of Fee .....	8
Section 204. Burden of Payment; Forfeiture for Nonpayment; Exemptions from Fee .....	9
Section 205. Payments By Whom Generally .....	10
Section 206. Records Retention and Limitations on Actions .....	11
Section 207. Measurement .....	11
Section 208. Gross Market Value .....	12
Section 209. Reports and Payment .....	13
Section 210. Refunds .....	13
Section 211. Interest on Late Payment and Penalties for Noncompliance .....	14
Section 212. Payment Under Protest .....	15
Section 213. RESERVED .....	16
Section 214. Bonds and Other Security for Fees .....	16
Section 215. RESERVED .....	16
Section 216. Audits and Records Requests .....	16
Section 217. Consent to Suit .....	17
Section 218. No Shifting or Reallocation of Fees .....	17
<b>SUBCHAPTER B PIPELINES.....</b>	<b>18</b>
Section 219. Pipelines; Pipeline Company Easements .....	18

Section 220.	Authority of Regulatory Agency .....	18
Section 221.	Requirement to Transport .....	18
Section 222.	Pipelines Without Easement .....	18
Section 223.	Severability .....	19
<b>CHAPTER THREE PERMITS .....</b>		<b>20</b>
Section 301.	Operating Permit Required .....	20
Section 302.	Application for Operating Permit.....	20
Section 303.	Conditions of Permit .....	21
Section 304.	Suspension or Cancellation.....	22
<b>CHAPTER FOUR SURFACE PROTECTION .....</b>		<b>23</b>
Section 401.	General Stipulations of Surface Area .....	23
Section 402.	Land Protection .....	23
<b>CHAPTER FIVE ENFORCEMENT, APPEALS AND EFFECTIVE DATE .....</b>		<b>25</b>
Section 501.	Enforcement.....	25
Section 502.	Appeals .....	27
Section 503.	Seizure of Property; Confiscation and Sale .....	28
Section 504.	Powers of the Nation’s Lighthouse and Orders of the Regulatory Agency ...	30
Section 505.	Action of the Regulatory Agency.....	30
Section 506.	Effective Date .....	30

**TITLE 33**  
**OIL & GAS SEVERANCE CODE**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Short Title**

This Act shall be known as the Oil and Gas Severance Code of the Seminole Nation of Oklahoma and may be referred hereinafter as this “Code.”

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 102. Findings**

The General Council finds that:

(a) The Seminole Nation of Oklahoma has the inherent sovereign authority to enact laws governing the development of the Nation’s lands and natural resources, and likewise the Nation has the authority to enforce such laws that are enacted with the purpose of preserving and protecting such inherent sovereign authority of the Nation;

(b) Under the Constitution of the Seminole Nation of Oklahoma, the General Council may legislate upon matters to become laws of the Nation, including:

- (1) To promote public health, education and charity and such other services that may contribute to the social and economic advancement of the members of the Seminole Nation of Oklahoma (Article V (a));
- (2) To enter into any contract in behalf of the Nation in conjunction with any activity that will further the well-being of the members of the Nation (Article V (f));
- (3) To speak or act on behalf of the Nation in all matters in which the Nation is empowered to act (Article V - Powers of the General Council);
- (4) To exercise any powers not specifically set forth in this article which at some future date may be appropriately delegated to the General Council (Article V (i));

(c) The future of the Nation and the welfare of its tribal members depend on regulation and preservation of all natural resources within the jurisdiction of the Nation; the Nation must become self-sufficient in its regulatory affairs, as outside regulatory resources can be temporarily or permanently discontinued; and internal regulation, independence and self- governance is a goal of the Nation and an expression of its sovereignty;



(d) The present needs of the Nation and its tribal members include an expansion of its regulatory oversight of the natural resources within its jurisdiction through the establishment of an oil and gas severance code, and it is in the best interest of the Seminole Nation and its people and the protection and preservation of their natural resources;

(e) The Nation must establish standards of regulation and practices with attendant responsibilities and provide a method to regulate such natural resources within the jurisdiction of the Nation;

(f) The Nation must regulate and collect certain fees related to the severance of natural resources and/or minerals from the lands and properties within the jurisdiction of the Nation; and

(g) It is in the interest of the Nation and its tribal members to provide a method to regulate the severance of such natural resources and the operations of businesses, corporations, and other ventures operating within the jurisdiction of the Nation related to such activities.

**Section 103. Purpose: Application of Laws: Sovereign Immunity**

(a) The purposes of this Oil and Gas Severance Code are as follows:

- (1) To protect and preserve the natural resources of the Nation and the property of its tribal members;
- (2) To impose regulatory fees related to the severance of non-renewable energy, minerals, and other natural resources from lands held in trust for the Nation and its agencies and instrumentalities, fee lands owned by the Nation and its agencies and instrumentalities, and all other allotted or restricted properties within the jurisdiction of the Nation;
- (3) To establish a source of revenue to fund the provision of tribal services, assist the economic development of the Nation, and sustain the Nation following the severance, depletion or exhaustion of all energy, minerals, and other natural resources from the lands within the jurisdiction of the Nation; and
- (4) To develop a source of revenue to assist in the delivery of services to tribal members and non-tribal members located within the jurisdiction of the Nation as determined by the General Council.

(b) This Code shall be interpreted and applied such that the Nation has exercised its inherent sovereign regulatory authority to the fullest extent permitted by the Nation's Constitution and not prohibited by federal law. The Nation's law shall be applied and enforced except to the extent that federal law preempts a specific exercise of the Nation's regulatory authority. The Regulatory Agency is authorized to issue, regulate and enforce the requirements as set forth herein, and the regulatory and enforcement authority conferred to the Regulatory Agency by this Code is concurrent with and in addition to the regulatory jurisdiction of any other sovereign, including but not limited to the federal government.

(c) Nothing in this Code shall be construed to waive the sovereign immunity of the Seminole Nation, its officers, employees, boards, or commissions, either explicitly or implicitly.

[History: Enacted by TO-2014-05, June 7, 2014.]

#### **Section 104. Severability**

The provisions of this Code are severable, and if any part or provision hereof shall be held void by the Nation's District Court or by a federal court with jurisdiction over the Nation, the decision of the court so holding shall not affect or impair any of the remaining provisions, or parts of provisions, of the Code.

[History: Enacted by TO-2014-05, June 7, 2014.]

#### **Section 105. Definitions**

(a) As used in this Oil and Gas Severance Code, unless the context otherwise requires, the following terms shall be defined as provided in Title 4, § 102 of the Code of Laws of the Seminole Nation: "Attorney General," "Commission," "Corporation" or "Domestic Corporation," "Court," "District Court," "Earned Surplus," "Employee," "Foreign Corporation," "Jurisdiction," "Nation," and "Prosecutor."

(b) As used in this Code, unless otherwise defined herein, the following terms shall be defined as set forth in Title 28, § 106 of the Code of Laws of the Seminole Nation: "BCR Commission," "Commission," "Entity," and "Payment in Lieu of Taxes."

(c) When used in this Oil and Gas Severance Code, the following words and terms shall be interpreted as follows, unless the context clearly indicates a different meaning:

- (1) "Avoidably lost" shall mean the nature of an incidental loss of, waste of, or damage to a mineral resource in the course of mineral development resulting from venting, flaring or other activity when such activity has not previously been permitted or approved in writing by the authorized representative of the Secretary of the Interior as to applicable tribal or allotted lands.
- (2) "Central delivery facility" shall mean a common metering and delivery location at which substances described in Section 201 are collected from multiple wells or leases and intermingled.
- (3) "Constitution" shall mean the Constitution of the Seminole Nation of Oklahoma.
- (4) "Cross-lease beneficial use" shall mean an operator's use of substances described in Section 201 derived from lands subject to a tribal or allotted lease for the benefit of operations on other lands subject to a tribal or allotted lease operated by the same operator, prior to the sale of such substances.

- (5) “Entitled proportionate gross working interest” shall mean the net revenue interest attributable to a working interest in a lease or minerals agreement covering lands subject to jurisdiction of the Nation, plus the proportionate share of any non-operating interests that burden that working interest.
- (6) “IRC” shall mean the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any succeeding law.
- (7) “Lands” shall mean that real property within the territorial jurisdiction of the Nation in which the Nation or an individual tribal member and/or allottee and/or heir of an allottee owns a legal or beneficial interest in the surface and/or a mineral estate, including reversionary interests following the expiration of leases or mineral development agreements, but excluding working interests, or interests carved there from, acquired by the Nation or by an individual Indian in fee lands located within the territorial jurisdiction of the Nation, unless or until such real property is accepted in trust for the benefit of the Indian mineral owner by the United States of America.
- (8) “Mineral” and “minerals” shall mean any oil, petroleum and/or other crude, condensate, other mineral oil, all gas, natural gas, methane gas, casinghead gas, processed gas, associated liquid products, any other hydrocarbon substances and minerals of any other type.
- (9) “Minerals agreement” shall mean any joint venture, operating, production sharing, service, managerial, lease, contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing or other development of minerals in which a mineral owner owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or the products of such minerals.
- (10) “Nation” and “Seminole Nation” shall mean the Seminole Nation of Oklahoma.
- (11) “Oil and gas severance fee” means a fee levied under Sections 201 et seq. of this Code.
- (12) “Other consideration” shall mean consideration other than cash, including consideration obtained through trades or exchanges of severed minerals.
- (13) “Operator” shall mean the person responsible for the exploration, development, and production of an oil or gas well or lease.

- (14) “Permit holder” shall mean the holder of an oil and gas operating permit issued under this Code.
- (15) “Person” shall mean any individual, partnership, firm, company, public or private corporation, limited liability company, association, trust, estate, political subdivision, agency, or any other legal entity, and/or its legal representative, agent(s) and/or assign(s).
- (16) “Processing costs” shall mean the reasonable, actual costs incurred by the person to process gas for the removal of products described in Section 201 (generally natural gas liquids). When costs are incurred through use of a processing plant owned either in whole or in part by the person or an entity affiliated with the person, only the following costs may be included in the calculation of deductible costs for fee purposes: operating and maintenance expenses, overhead, depreciation and a return on un-depreciated capital investment directly associated with the plant. The basis and method of depreciation shall not be changed once used, regardless of any changes in ownership of the plant.
- (17) “Regulatory Agency” shall mean the Seminole Nation Business and Corporate Regulatory Commission or other tribal agency as established by written resolution or ordinance of the General Council.
- (18) “Severance” shall mean the physical separation or removal of a mineral from lands, including the extraction of methane from severed tribal coal estates restored to tribal beneficial ownership by the United States of America pursuant the Indian Reorganization Act of 1934.
- (19) “Territorial jurisdiction” and “jurisdiction of the Nation” shall mean all "Indian country" lands as defined by federal law located within the geographical boundaries of the Seminole Nation as they existed in 1898 pursuant to the Treaty of March 21, 1866, 14 Stat. 755 entered into by the Seminole Nation and the United States of America, including but not limited to the following property located within said boundaries: property held in trust by the United States of America on behalf of the Seminole Nation of Oklahoma; property owned in fee by the Seminole Nation of Oklahoma; restricted and trust allotments, both surface and/or minerals; and dependent Indian communities. The Territorial Jurisdiction of the Nation shall also extend to all property located outside said boundaries owned in fee by the Nation, its agencies and/or instrumentalities, or held in trust by the United States on behalf of the Seminole Nation of Oklahoma, its agencies and/or instrumentalities, and/or all minerals of Seminole Nation Tribal members with any restrictions or held in trust by the United States of America.
- (20) “Transportation costs” shall mean the reasonable, actual costs incurred by the person for moving marketable products described in Section 201 of

this Code to a point of sale or other point of final disposition that is remote from the point of initial severance, separation, treatment or measurement (generally the point approved by the Bureau of Land Management for the purposes of royalty measurement). Not included in this definition are costs incurred by the person for the movement or removal from the production stream of products not described in Section 201 or products whose value is otherwise exempted from application of this Code or for compression intended to enhance production or to meet pipeline delivery pressure requirements. When costs are incurred on a transportation system owned either in whole or in part by the person or an entity affiliated with the person, only the following costs may be included in the calculation of deductible costs for fee purposes: operating and maintenance expenses, overhead, depreciation and return on undepreciated capital investment directly associated with the transportation system. The basis and method of depreciation shall not be changed once used, regardless of any changes in ownership of the system.

- (21) “Unavoidably lost” shall mean the nature of an incidental loss of, unavoidable waste of, or damage to a mineral resource in the course of mineral development resulting from venting, flaring or other activity when such activity and the resulting loss, waste or damage have been previously approved in writing by the General Council or its authorized representative as to tribal lands or by the Secretary of the Interior or his authorized representative as to allotted lands.
- (22) “Working interest” shall mean the interest obtained by a mineral lessee or grantee of a minerals agreement in minerals or revenues attributable to the sale of minerals producible under such lease or minerals agreement, inclusive of overriding royalty interests or other non-operating interests subsequently derived from the working interest.

[History: Enacted by TO-2014-05, June 7, 2014; subsection numbering scheme modified on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203; amended by TO-2018-04, April 28, 2018.]

## **Section 106. Authority**

(a) In addition to all other powers found herein, this Code shall delegate to the Regulatory Agency, its Board, Commission, and/or Director, the following powers to carry out and enforce the provisions of this Code, including, but not limited to:

- (1) Promulgating rules and regulations as necessary under this Code;
- (2) Conducting appellate hearings under this Code;
- (3) Reviewing, approving, and/or disapproving all applications and/or requests submitted to the Regulatory Agency under this Code;

- (4) Conducting periodic inspections, as provided herein or by any rules promulgated hereunder, or determined solely by the Regulatory Agency, and any revocations, if required under this Code;
- (5) Computing all fees payable to the Regulatory Agency under this Code;
- (6) Depositing revenues collected by the Regulatory Agency under this Code;
- (7) Delegating any of these powers to subordinate agents and/or officers of the Regulatory Agency as necessary to carry out and enforce the provisions of this Code;
- (8) Any other powers necessary for the implementation and/or enforcement of this Code; and
- (9) Establishing a land research program to support enforcement, research the land resources of the Nation, provide support to other agencies of the Nation, and to generally carry out the provisions of this Code.

[History: Enacted by TO-2014-05, June 7, 2014; amended by TO 2016-04, September 3, 2016; subsection numbering scheme modified on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]

[Chapter History: Numbering format for all sections in Chapter One revised from 1-101 et seq. format to 101 et seq. format on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER TWO SEVERANCE FEE AND LIABILITY; PIPELINES**

### **SUBCHAPTER A SEVERANCE FEE AND LIABILITY**

#### **Section 201. Oil and Gas Severance Fee Imposed**

An oil and gas severance fee is hereby imposed on the severance of any and all oil, petroleum and/or other crude, condensate, other mineral oil, all gas, natural gas, methane gas, casinghead gas, processed gas, associated liquid products, any other hydrocarbon substances and minerals of any other type from all lands and properties within the territorial jurisdiction of the Nation.

[History: Enacted by TO-2014-05, June 7, 2014.]

#### **Section 202. Liability for Severance Fee**

The amount of oil and gas severance fee to be paid and the liability for payment of such oil and gas severance fee shall be determined, become effective, and accrue at the time of severance of substances described in Section 201 from all lands and properties subject to the jurisdiction of the Nation regardless of whether monetary compensation or other consideration has been received for the sale of such substances, including but not limited to, the placement of gas into pipeline inventory; provided, however, liability shall not accrue for payment of oil and gas severance fee with respect to the severance of substances unavoidably lost.

[History: Enacted by TO-2014-05, June 7, 2014.]

#### **Section 203. Rate of Fee; Due Date of Fee; Payment of Fee**

(a) The oil and gas severance fee set forth herein shall be at the rate of eight percent (8.0%) of the gross market value of all substances described in Section 201 produced, severed, saved, and/or removed from any lands and properties subject to the jurisdiction of the Nation. The gross market value of a substance shall be equal to the price of such substance published on a national index selected by the Regulatory Agency at the beginning of each calendar year on the last day of the month during which the substance was produced, severed, saved, and/or removed. The Regulatory Agency shall publish the selected national index in the regulations promulgated under this Title.

(b) The fees required by this Code shall be due at the time the substances described in Section 201 are produced, severed, saved and/or removed from the lands and shall be payable monthly to the Regulatory Agency.

(c) Payment of all oil and gas severance fees provided in this Code shall be made monthly on or before the last day of the calendar month following the calendar month for which such substances described in Section 201 were produced, severed, saved, and/or removed from any lands and properties subject to the jurisdiction of the Nation.

(d) Any payment not made when payable as provided herein shall incur a penalty of ten percent (10%) of oil and gas severance fees due for each month such past due payment is outstanding and shall also bear interest at the annual rate of ten percent (10%) until paid in full. Any partial payments made shall be applied first to any accrued penalties, then to any accrued interest, then lastly to any amounts of past due oil and gas severance fees.

[History: Enacted by TO-2014-05, June 7, 2014; subsection numbering scheme modified on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 204. Burden of Payment: Forfeiture for Nonpayment: Exemptions from Fee**

(a) The burden of payment of the oil and gas severance fee required by this Code shall be upon the operator and its successors in interest, and the oil and gas severance fee accruing hereunder shall be a lien upon the interest and/or working interest of such operator in the well, site, and/or minerals, from which the substances described in Section 201 were produced, severed, saved, and/or removed.

(b) Such lien may be foreclosed and the interest of the operator may be forfeited and sold as possessory interests may be forfeited and sold for nonpayment of the oil and gas severance fee required hereunder, subject to provisions of this paragraph set forth below, when such oil and gas severance fee remains unpaid in excess of sixty (60) days after the due date for filing of the reports/returns required by this Code.

- (1) At least thirty (30) days prior to the commencement of any forfeiture proceedings described above, the Regulatory Agency shall serve notice on all persons known from tribal, Bureau of Indian Affairs (“BIA”), or U.S. Geological Survey records to be an interested party in such well, site, and/or minerals of the amount of the oil and gas severance fees due and unpaid.
- (2) Such notice shall state the intent of the Regulatory Agency to institute forfeiture proceedings, and the right of such person to pay the Oil and Gas Severance Fees due and unpaid on behalf of the Operator and recover such payment from the Operator in civil suit.
- (3) Such notice shall also be personally served by the Nation’s Lighthorse or BIA federal police or by certified U.S. mail, deliverable to the addressee only, return receipt requested, or in any other manner in which a summons may be served under tribal law. Service by publication may be had upon an order of the Nation’s District Court for good cause shown. Service of the notice by publication shall be made by publication of the notice at least twice during the thirty (30) day waiting period, in a newspaper in general circulation in Seminole County, Oklahoma, and as may be further ordered by the Nation’s District Court.

(c) The following volume exemptions from oil and gas severance fee are authorized:



- (1) Volumes attributable to a landowner's royalty interest established in a lease or minerals agreement issued by the Nation or by a tribal member allottee mineral owner.
- (2) Volumes attributable to an overriding royalty interest granted to or obtained by the Nation or by an Indian allottee owner derived from working interests in leases or minerals agreements issued by the Nation or by an Indian allottee mineral owner.
- (3) Volumes used for the benefit of operations on the leased premises from which such substances are produced, prior to removal therefrom or sale; provided that volumes attributable to use off the lease from which such minerals are produced are not exempt from oil and gas severance fee except as set forth in Section 204(c)(4), below.
- (4) Volumes associated with cross-lease beneficial use or shrinkage volumes factored into allocations associated with a central delivery facility, if and only if the lessee or operator has obtained prior written approval from the Regulatory Agency for such cross-lease beneficial use or for establishment of the central delivery facility and the formula for allocating volumes associated with such central delivery facility. In granting or denying exemptions for cross-lease beneficial use or for central delivery facilities, the Regulatory Agency shall determine from the totality of the circumstances, including relative royalty rates, whether exempting such volumes from fee will adversely impact the best interests of the Nation. A requested exemption for cross-lease beneficial use, but not for a central delivery facility, shall be deemed denied unless the Regulatory Agency shall have taken action granting a written request within sixty (60) days of receipt of such request.

[History: Enacted by TO-2014-05, June 7, 2014; subsection numbering scheme modified on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]

#### **Section 205. Payments By Whom Generally**

Except for an owner of a landowner's royalty interest or overriding royalty interest specifically described in Sections 204(c)(1)-(2), the incidence of the oil and gas severance fee falls upon any owner of a working interest or person claiming ownership of a working interest in substances described in Section 201, severed from lands subject to the jurisdiction of the Nation. Payment of the oil and gas severance fee for each such person shall be made as herein provided by the operator based on that person's entitled proportionate gross working interest in or attributable to such described substances. Payment of the oil and gas severance fee may be made by the operator of any well on behalf of working interest owners as a matter of internal policy or by agreement with such working interest owners. Volume allocation and subsequent fee payment shall be based upon each person's entitled volumes regardless of the actual volume taken.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 206. Records Retention and Limitations on Actions**

(a) Each lessee, operator or other person subject to this Code shall make and retain accurate and complete records necessary to demonstrate that fee payments due under this Code have been made in compliance with this Code or regulations promulgated pursuant to this Code. Such records shall include information regarding: severance and production, transportation, treating, processing and marketing of substances described in Section 201.

(b) Lessees, operators or other persons required to keep records under this section shall maintain and preserve them for six (6) years from the last day of the month in which a severance of a substance described in Section 201 takes place. Notwithstanding the foregoing, when an audit or review by the Regulatory Agency of a person's compliance under this Code is pending, all existing records of the person and persons severing minerals on such person's behalf or of persons having paid fees on the person's behalf shall be maintained by the record holder until released in writing by the Regulatory Agency from the obligation to maintain such records.

(c) No action by the Regulatory Agency or the Nation with respect to compliance with this Code shall be brought against any person unless commenced within fifteen (15) years from the date that the Regulatory Agency or Nation knows or should have known that the cause of action has accrued. In the event that non-compliance with this Code could be reasonably ascertained only upon completion of an audit, and in the event that such an audit has not been commenced or completed within the fifteen (15) year limitations period, then nothing herein contained is intended to preclude the Regulatory Agency or the Nation from asserting lack of knowledge for purposes of establishing the date of accrual of a cause of action.

(d) Nothing provided herein shall act as a waiver of the Nation or its agents and instrumentalities, or the Regulatory Agency's sovereign immunity. Nothing herein shall be deemed to give the State of Oklahoma any jurisdiction or regulatory authority over the Indian lands of the Nation. The Seminole Nation Tribal Court, with any and all rights of appeal therefrom, is the court of competent jurisdiction regarding any disputes related in any way to this Code. Nothing herein shall be construed as consent by the Nation or the Regulatory Agency to suit in any state court. Nothing in this Code shall be deemed to be a waiver of the Nation's sovereign immunity, except as provided in this Section.

(e) In the event the Nation expressly and in writing waives its sovereign immunity, or a court of competent jurisdiction, as defined herein, finds a waiver of the Nation's sovereign immunity, no action by a person may be brought against the Nation contesting the lawfulness of the Code or its application, unless commenced within one (1) year from the date that the person knows or should have known that a cause of action has accrued.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 207. Measurement**

(a) The severance of all crude oil and condensate normally measured in liquid form shall be measured and reported in units of barrels of 42 U.S. gallons corrected to standard

temperature, gravity and other variables established in the regulations of the United States Department of the Interior, Bureau of Land Management.

(b) The severance of all-natural gas and other vaporous hydrocarbon substances normally measured in gaseous form shall be measured and reported in units of one thousand cubic feet (MCF) saturated with water vapor corrected to the standard pressure of 14.73 psia and temperature of 60 degrees Fahrenheit. The Btu content shall be measured while the gas is saturated with water vapor at 60 degrees under a pressure equivalent to that of 30 inches of mercury at 32 degrees under standard gravitational force.

(c) Processed Natural Gas Liquids (“NGLs”) shall be measured in U.S. gallons.

(d) Reportable volumes shall be those established through measurement at the wellhead unless otherwise approved in writing by the Regulatory Agency or its authorized representative.

(e) Metering devices measuring the flow of severed substances described in Section 201 shall be accurate devices based upon prevailing industry practice and acceptable to the Bureau of Land Management in the measurement of Indian lease production. No electronic flow measurement devices shall be used in metering for purposes of this Code in the absence of express prior written permission from the Regulatory Agency or its authorized representative. Such permission is hereby conditioned upon the operator of such metering devices maintaining a record, subject to the record retention requirements of Section 206, of all raw data acceptable to the Nation obtained or obtainable from the electronic flow measurement device. Any request for permission to use electronic flow measurement devices shall specify the location for intended use, and permission for such use as to one location shall not constitute permission for any other location. Any violation of the requirements of this subsection shall subject the violator to the penalty provisions set forth in Section 211(d) of this Code.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 208. RESERVED**

[History: Enacted by TO-2014-05, June 7, 2014; subsection numbering scheme modified on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203; reserved by TO 2018-04, April 28, 2018.]

## **Section 209. Reports and Payment**

(a) The operator of a well shall provide a written division of interest statement for such well upon request of the Regulatory Agency. Additionally, a person shall be required to provide any additional reports or information that the Regulatory Agency deems necessary for the proper administration of this Code.

(b) The operator shall submit a monthly return to the Regulatory Agency upon a form prescribed by the Regulatory Agency.

(c) Payment of the fee shown on the monthly return shall be made at the time such return is filed.

(d) All monthly returns and corresponding fee payments shall be due on or before the last day of the second month following the month of severance (for example, fees associated with January production are due on the last day of March). If the due date falls on a weekend, a federally recognized holiday, or a tribally recognized holiday, then the monthly reports and payments shall be due on the working day immediately following. For purposes of this section, a return and payment shall be deemed as filed on the date postmarked.

[History: Enacted by TO-2014-05, June 7, 2014.]

## **Section 210. Refunds**

(a) Except as provided in subsection (b) of this Section, any person paying any fee erroneously may apply to the Regulatory Agency for a refund within two years of the date of severance. The Regulatory Agency shall refund such fee if found to have been erroneously paid. All amounts refunded under this subsection shall bear interest at the lesser of: (i) the rate described in IRC §6621(a)(2), or (ii) the rate of return received by the Nation on the refundable amounts while said amounts have been in the Nation's possession. In computing amounts of erroneous overpayment, the Regulatory Agency may examine oil and gas severance fee payment records to determine if any offsets exist resulting from erroneous underpayment.

(b) With respect to refunds resulting from a successful protest submitted under Section 212 of this Code or under other authority recognized by the Nation, should protested payments be escrowed or separately held by the Nation during the period of the protest, then the refund of protested fee payments shall bear interest at the rate earned during the period of escrow; provided that such refunded interest amount shall not exceed the rate described in IRC §6621(a)(2). This subsection shall, to the maximum extent permitted by law, apply to any protests pending as of the date of enactment of this Code.

[History: Enacted by TO-2014-05, June 7, 2014.]

## **Section 211. Interest on Late Payment and Penalties for Noncompliance**

(a) If an operator fails to pay the entire oil and gas severance fee by the time proscribed for payment, such amount shall be considered delinquent and shall bear interest on the unpaid amount at the underpayment rate established under IRC §6621 shall be paid for the period from such last date to the date paid. Any person required to pay the oil and gas severance fee under this Code who fails to comply with a written order issued by the Regulatory Agency or by such other representative designated by the Nation to pay any delinquent amount shall be required to pay additional interest at a rate of one percent (1%) per day on those delinquent amounts.

(b) If an operator fails to pay the entire oil and gas severance fee by the time proscribed for payment, there shall be added to the oil and gas severance fee ten percent (10%) of the unpaid amount if the failure is for not more than one (1) month, with an additional ten percent (10%) for each additional month or fraction thereof during which such failure continues.

(c) Any person who consistently engages in a practice of erroneous reporting, as determined by the Regulatory Agency or such other representative designated by the Nation, including but not limited to incorrect reporting of royalty exemption rates, incorrect tribal acreage factors or incorrect API numbers or lease numbers, shall be subject to a civil penalty of up to Five Hundred Dollars (\$500.00) for the first occurrence, and then One Thousand Dollars (\$1,000.00) for the second occurrence, and then an amount equal to the greater of One Thousand Dollars (\$1,000.00) or triple (3x) the amount of underpayment to the Regulatory Agency caused by and/or related to such erroneous reporting for each subsequent occurrence. Such amount of underpayment shall be determined solely by the Regulatory Agency.

(d) Any person who fails to comply with a written order issued by the Regulatory Agency or by such other representative designated by the Nation, to provide reports or requested information or to post security, as required in Section 214, shall be assessed a civil penalty of Five Hundred Dollars (\$500.00) per day for each day said person is in violation of said order. A written request for extension of time within which to comply with a written order to provide reports or information other than monthly payments or monthly returns of producers or operators, if filed within the time period for compliance with said written order, may be granted by the Regulatory Agency for a period of up to thirty (30) days. Subsequent requests for extension may be granted by the Regulatory Agency only upon a clear showing of good cause as determine solely by the Regulatory Agency.

(e) In addition to such other interest or penalties provided by the foregoing Subsections, any person who employs electronic flow measurement devices in compliance with the provisions in Section 207(e) but who fails to establish and maintain an auditable record of raw flow measurement data shall be subject to a civil penalty on a per meter basis up to One Thousand Dollars (\$1,000.00) per day for each day that such information is lacking. Any person who fails to repair or correct an electronic flow measurement device malfunction in a timely manner, as solely determined by the Regulatory Agency, shall be subject to a civil penalty on a per meter basis up to Five Hundred Dollars (\$500.00) per day for each day that the metering device is not timely repaired or corrected, as determined solely by the Regulatory Agency, and One Thousand Dollars (\$1,000.00) per day for each day after receiving written notice from the Regulatory Agency of the need for repair or correction of such electronic flow measurement device malfunction.

(f) Any person required by this Code to file any return, report, or provide information to the Nation, who knowingly falsifies a report or who knowingly provides incorrect information shall be subject to a civil penalty for each occurrence in an amount equal to the greater of One Thousand Five Hundred Dollars (\$1,500.00) or triple (3x) the amount of underpayment to the Regulatory Agency caused by and/or related to such false report and/or incorrect information. Such amount of underpayment shall be determined solely by the Regulatory Agency. Furthermore, such person(s) may be subject to exclusion, banishment and/or removal from within the territorial limits of the Nation in accordance with the laws of the Nation, as amended or supplemented.

(g) All assessments of interest or penalties provided for in this Section may be in addition to such further remedies available to the Nation under Section 217 of this Code.

[History: Enacted by TO-2014-05, June 7, 2014.]

## **Section 212. Payment Under Protest**

(a) A person paying any amount required under this Code may pay such amount under protest by filing a written Notice of Protest with the Regulatory Agency.

- (1) A Notice of Protest shall be accompanied by timely payment of the protested fee. A Notice of Protest shall contain: a statement of reasons, a request for a refund of the protested amounts, and a request for a conference with the Regulatory Agency.
- (2) In the event that the basis for the protest is continuing in nature and the person desires to protest subsequent payments made during consideration of the pending protest, subsequent Notices of Protest may incorporate the original Notice of Protest by reference, except for the request for refund of protested amounts, which shall be set forth in each Notice of Protest. All such Notices of Protest incorporating an original Notice of Protest shall be resolved simultaneously under the procedures described in this Subsection.
- (3) The protest conference shall be held within ninety (90) days of the filing of the original Notice of Protest. Should the person fail to appear on the date appointed for the conference, the protest may, in the absence of a showing of unforeseeable circumstances, be summarily dismissed and the request for refund of the protested amounts shall be denied.
- (4) Should the protest fail to be resolved during the conference with the Regulatory Agency, the Regulatory Agency shall request a hearing before the Commission or Board overseeing the Regulatory Agency, and shall be held within ninety (90) days of the conference, at which time the person shall present their reasons and arguments for the protest. Should the person fail to appear on the date appointed for the hearing before the Commission or Board, the protest may, in the absence of a showing of unforeseeable circumstances, be summarily dismissed and the request for refund of the protested amounts denied.

- (5) The Commission or Board overseeing the Regulatory Agency shall render a decision on any protest within sixty (60) days following the date of the hearing. The rationale supporting a decision regarding a specific protest may be relied upon in deciding other protests filed for identical reasons.

(b) Upon receipt of a written Notice of Protest, the Regulatory Agency may, in its discretion, direct that the protested payment be placed in escrowed or separately identifiable account.

[History: Enacted by TO-2014-05, June 7, 2014; subsection numbering scheme modified on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]

**Section 213. RESERVED**

[History: Reserved by TO-2014-05, June 7, 2014.]

**Section 214. Bonds and Other Security for Fees**

(a) Whenever any operator shall habitually fail or refuse to file any required report or pay any fees required by this Code, on or before the date such report and/or fee is due to the Regulatory Agency, the Regulatory Agency may require the operator, following written notice, to post with the Regulatory Agency a cash or acceptable surety bond in amount solely determined by the Regulatory Agency to guarantee the filing of such report or payment of such fees as required herein.

(b) Such cash or bond amount may be in an amount solely determined by the Regulatory Agency to be sufficient to guarantee timely reporting or payment, provided that the amount of the cash or bond shall not exceed the total of three times (3x) the annual amount due to the Regulatory Agency by the operator under this Code.

(c) An order of the Regulatory Agency requiring an operator to post such cash or bond may be reviewed only by the Nation's District Court.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 215. RESERVED**

[History: Reserved by TO-2014-05, June 7, 2014.]

**Section 216. Audits and Records Requests**

The Regulatory Agency shall have the power and authority to ascertain and determine whether or not any report herein required to be filed with it is a true and correct report of the information required thereby and/or herein and that such person is in compliance with this Code. If any person has made an untrue and/or incorrect report required by this Code or any rule or regulation authorized hereunder, the Regulatory Agency shall, under rules and regulations promulgated and prescribed by it, ascertain the correct information and prosecute said person under said rules and regulations. The Regulatory Agency is specifically authorized to obtain any necessary and/or related records as may be available from the Bureau of Indian Affairs, the United States Geological

Survey, the Oklahoma Tax Commission, the Oklahoma Corporation Commission, and any other governmental agency and/or office with information necessary for the purposes of this provision.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 217. Consent to Suit**

Any owner of an interest or person claiming ownership of an interest in substances described in Section 201, severed from lands subject to the jurisdiction of the Nation shall be subject to the personal jurisdiction of the Nation's District Court and be considered to have given consent to suit therein.

**Section 218. No Shifting or Reallocation of Fees**

No royalty interest or overriding royalty interest of any Seminole Nation tribal member shall be reduced or affected in any way by the fees required by this Code. No fees required by this Code may be shifted or allocated to an owner of a landowner's royalty interest or overriding royalty interest specifically described in Section 204(c)(1)-(2) by any person, including but not limited to any owner of an interest or person claiming ownership of an interest in substances described in Section 201, severed from lands subject to the jurisdiction of the Nation and/or any person liable for payment of the fees imposed by this Code. Any person who attempts to shift or allocate any fee required by this Code, as determined solely by the Regulatory Agency, shall be liable to the person to whom the fee was shifted or allocated in an amount equal to triple (3x) the amount shifted or allocated, plus all costs and expenses associated with enforcing any rights provided herein, including but not limited attorney fees and legal costs. Furthermore, any person who attempts to shift or allocate any fee required by this Code, as determined solely by the Regulatory Agency, shall be subject to a civil penalty for each occurrence in an amount equal to the greater of Five Thousand Dollars (\$5,000.00) or triple (3x) the amount shifted or allocated per occurrence and per person such amount was shifted or allocated to, and/or for any attempt as determined solely by the Regulatory Agency, plus all costs and expenses incurred by the Regulatory Agency to enforce the provisions provided herein, including but not limited attorney fees and legal costs. Such amount shall be determined solely by the Regulatory Agency. Furthermore, such person(s) may be subject to exclusion, banishment and/or removal from within the territorial limits of the Nation in accordance with the laws of the Nation, as amended or supplemented.

[History: Enacted by TO-2014-05, June 7, 2014.]

[Subchapter History: Subchapter A created from Chapter Two sections 2-101 through 2-118 and such section number format modified from 2-101, et seq. to 201, et seq. on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]



## **SUBCHAPTER B PIPELINES**

### **Section 219. Pipelines: Pipeline Company Easements**

Any pipelines, distribution systems, other facilities, and similar structures, within the territorial jurisdiction of the Nation shall be subject to the inherent sovereign regulatory authority of the Nation to the fullest extent permitted by the Nation's Constitution and not prohibited by federal law. Pipeline companies securing easements for operation of pipelines and other facilities within the territorial jurisdiction of the Nation shall be required, as a condition to grants of easements or extensions of easements, for lateral or main pipelines, or other supporting facilities, to deliver, on demand of the Nation from time to time, the Nation's oil, petroleum and/or other crude, condensate, other mineral oil, all gas, natural gas, methane gas, casinghead gas, processed gas, associated liquid products, any other hydrocarbon substances and minerals of any other type (the "Nation's Minerals"), for industrial, municipal or domestic use to points on the pipelines of such companies.

[History: Enacted by TO-2014-05, June 7, 2014.]

### **Section 220. Authority of Regulatory Agency**

The Regulatory Agency is authorized and directed to regulate all pipelines, distribution systems, other facilities, and similar structures, within the territorial jurisdiction of the Nation and promulgate and enforce any and all rules and regulations necessary to carry out this delegation of authority. The Regulatory Agency is further authorized and directed to negotiate easements, extensions of easements, and delivery of the Nation's Minerals as provided in this Code.

[History: Enacted by TO-2014-05, June 7, 2014.]

### **Section 221. Requirement to Transport**

No easements or extensions of easements for lateral extensions or main pipelines or facilities accessory to operation of such pipelines shall be granted without agreement of such pipeline companies to transport the Nation's Minerals as provided herein.

[History: Enacted by TO-2014-05, June 7, 2014.]

### **Section 222. Pipelines Without Easement**

Any person constructing or maintaining any pipelines, lateral or main pipeline, distribution systems, other facilities, and similar structures, within the territorial jurisdiction of the Nation (excluding well production equipment and gathering lines serving one lease) without an easement properly approved as required herein in effect for such construction, operation, and/or maintenance or temporary permit approved by the General Council of the Nation, shall be subject to a charge to be assessed by the Regulatory Agency for such unauthorized operation or maintenance of Five Dollars (\$5.00) per rod per month or fraction thereof for pipelines or Twenty-Five Dollars (\$25.00) per acre per month or fraction thereof for land used for other facilities.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 223. Severability**

If any part or application of this chapter of this Code is held invalid for any reason, the remainder of this chapter or its application to other situations or persons shall not be affected.

[History: Enacted by TO-2014-05, June 7, 2014.]

[Subchapter History: Subchapter B created from Chapter Two sections 2-201 through 2-205 and such section number format modified from 2-201, et seq. to 219, et seq. on September 7, 2016 pursuant to authority granted by SNC Title 21, § 203.]

## **CHAPTER THREE**

### **PERMITS**

#### **Section 301. Permit Required**

(a) No person shall engage in any oil and gas activity, including but not limited to drilling, development, exploration, and/or preparation for such related activities, within the jurisdiction of the Nation without first obtaining and maintaining in good standing an oil and gas Operating Permit from the Nation.

(b) No person shall engage in the leasing of minerals and/or mineral rights within the Nation's jurisdiction without first obtaining and maintaining in good standing a Leasing Permit issued by the Nation. A Leasing Permit issued by the Nation shall be required for all leases of mineral rights occurring within the Nation's jurisdiction, regardless of other licensure requirements, business specific or otherwise.

(c) The Regulatory Agency shall be authorized to issue Operating Permits and Leasing Permits as required herein. Forms for any and all applications, permits and related documents required herein shall be promulgated and made available by the Regulatory Agency.

[History: Enacted by TO-2014-05, June 7, 2014; amended by TO 2018-04, April 28, 2018.]

#### **Section 302. Application for Operating Permit and or Leasing Permit**

Every person applying for an operating permit and/or leasing permit provided herein shall submit to the Regulatory Agency the following:

(a) A completed application for an operating permit and/or leasing permit as required by rules promulgated by the Regulatory Agency;

(b) Satisfactory proof, as solely determined by the Regulatory Agency, that the applicant has obtained a bond or insurance from a company authorized to act as surety and acceptable to the Regulatory Agency for the activities covered by the permit the applicant is seeking, in an amount set by the Regulatory Agency;

(c) A summary of the business history and transactions conducted or engaged in by the applicant, including the locations, types of operations and business names operated under;

(d) Legal description, address, and directions to the location of the premises where the activity of the application will be conducted;

(e) Complete description of all activities to be conducted at the premises;

(f) If applicant is a corporation, LLC, or other business entity, a copy of the applicant's organizational documents properly filed with the state or other sovereign government under which it is organized, a statement of good standing of the applicant issued within thirty (30) days by the same government entity, and a copy of the resolution, power of attorney or other

instrument authorizing the applicant to act on behalf of the business entity;

(g) An executed (signed) copy of an agreement, promulgated by the Regulatory Agency, whereby applicant agrees to abide by all applicable laws and regulations of the Nation, acknowledgment of applicant of their receipt of a copy of this Code and any regulations promulgated hereunder, and acceptance by applicant of all conditions upon which the requested permit is issued;

(h) Payment of the application fee in the amount set by the Regulatory Agency, which shall not be less than Two Hundred Fifty Dollars (\$250.00) for an Operating Permit and not less than One Hundred Dollars (\$100) for a Leasing Permit;

(i) Certification that the applicant is not an employee or agent of the federal government; and

(j) Certification that applicant is in compliance with all other laws of the Seminole Nation of Oklahoma and paid any and all fees and/or taxes required thereunder.

[History: Enacted by TO-2014-05, June 7, 2014; amended by TO 2018-04, April 28, 2018.]

### **Section 303. Conditions of Permit**

Each permit shall contain the following conditions and/or requirements:

(a) One (1) year term, renewable annually upon payment of the annual permit fee and update of all information required to be filed under the application process set forth above;

(b) Permit holders shall be required to provide written notice to the Regulatory Agency of a bankruptcy, receivership, or any material change in financial condition;

(c) Require premises covered by the permit:

(1) Be constructed and maintained in a safe and clean manner;

(2) Be open to inspection by the Regulatory Agency and/or any other tribal or federal agency having regulatory jurisdiction over any activity on the premises; and

(3) Be maintained and operated in compliance with all applicable laws and regulations of the Nation and the federal government;

(d) Provide the permit provided herein for inspection and copying upon request by any agent or officer of the Regulatory Agency, the Nation's Lighthorse, or other tribal or federal agency;

(e) Require the permit holder to maintain insurance and/or bonding in the amounts, determined solely by the Regulatory Agency, necessary to protect the Nation and the people and property within the Nation;

(f) Require all oil and gas activity to conform to all applicable laws of the Nation and

federal government, including all development plans approved by the Nation and/or federal government;

(g) Require that all oil and gas activity to be conducted so as to give preference to Native Americans in employment and contracting; and

(h) Prohibit the permit from being transferred without proper authorization by the Regulatory Agency.

[History: Enacted by TO-2014-05, June 7, 2014; amended by TO 2018-04, April 28, 2018.]

#### **Section 304. Suspension or Cancellation**

Any permit provided herein may be suspended, canceled and/or not renewed for any of the following reasons:

(a) Filing an application or any other document which contains any incomplete, false, or misleading information and/or statements;

(b) Non-payment of any fee required herein;

(c) Noncompliance/violation of any federal laws/regulations and/or provision of this Code or any rule or regulation promulgated by the Regulatory Agency as provided herein;

(d) Noncompliance/violation of any provision of the Seminole Nation Code of Laws and/or any rule/regulation promulgated thereunder;

(e) Noncompliance/violation of any condition of the permit issued hereunder; or

(f) Any other reason considered to be not in the best interest of the Nation as solely determined by the Regulatory Agency.

[History: Enacted by TO-2014-05, June 7, 2014.]

## **CHAPTER FOUR SURFACE PROTECTION**

### **Section 401. General Stipulations of Surface Area**

(a) Every person applying for an operating permit provided herein shall submit to the Regulatory Agency a completed Site Development Plan for each premises included in the application for an operating permit, as required by rules promulgated by the Regulatory Agency, which shall be subject to approval by the Regulatory Agency.

(b) Certain areas shall forever remain undisturbed by drilling, construction, trenching, and/or other means and methods of the oil and gas industry, including but not limited to tribal/family burial sites, lands designated as sacred by resolution of the General Council and public lands for recreational use designated by resolution of the General Council.

(c) Surface work that is required and/or provided by the Nation shall be charged to the operator at a rate comparable to the industry standard and all work will be to area standards.

(d) Prior to the commencement of drilling and/or other work, the operator shall have the leased premises adequately marked and surveyed by a licensed surveyor who meets federal surveyor standards and credentials.

(e) Any wells drilled that do not produce minerals in paying quantities, but which are capable of producing water satisfactory for domestic, agricultural or livestock use by the surface owner, may be transferred to the surface owner and/or Nation in an amount equal to the casing and any equipment left in or on the well, but subject to inspection and approval by the Nation and/or the Nation's environmental services authority.

(f) Grazing rights to the surface of any lands leased by an operator shall be protected and the Nation's rights respecting the use and/or control of water shall be unimpaired.

(g) Tribal members of the Seminole Nation of Oklahoma shall be employed in such mining, drilling, exploration and/or development of such premises to the fullest extent that their qualifications and the laws of the Nation permit and every reasonable effort will be made to train tribal members of the Nation in the skills and abilities required in such operations to the end that may be employed in such skilled positions for which they become qualified.

[History: Enacted by TO-2014-05, June 7, 2014.]

### **Section 402. Land Protection**

(a) Protection of Property. Any operator, lessee, agent and/or other person shall:

- (1) Conduct all work/operations authorized by any lease with due regard for good land management practices common to the area;

- (2) Avoid unnecessary damage to vegetation, timber, crops, or other natural resource, and to improvements such as roads, bridges, cattle guards, gates and fences;
- (3) Prevent soil erosion and make good efforts to demonstrate such practices;
- (4) Ensure that all pits associated with the work/operations are properly lined and fenced; and
- (5) Bury all pipelines, associated with or related in any way to the work/operations, below plow depth.

(b) Reimbursement for Damage. Any operator, lessee, agent and/or other person shall: (1) pay the surface owner, and/or their tenant, for any and all damage to or destruction of property caused by the work/operations of the Operator, lessee, agent and/or other person; (2) promptly respond to any notice and/or other correspondence from the Regulatory Agency; (3) reimburse within thirty (30) days the Regulatory Agency, and/or other agent of the Nation, for all costs of repair and/or remediation related to the work/operations performed. If any operator, lessee, agent and/or other person fails to respond to any notice and/or other correspondence regarding repairs and/or remediation related to any work/operations within thirty (30) days from the date such notice/correspondence is deposited with the U.S. Postal Service, the Regulatory Agency, and/or agent of the Nation is authorized to contract and/or perform the repair and/or remediation with all costs associated with such repair and/or remediation to be billed to the operator, lessee, agent and/or other person and/or interest holders.

(c) Water. Water for the use of drilling operations shall not be obtained from existing or new water wells, tanks, springs, stock reservoir, watercourses, or lakes without prior written permission from the Regulatory Agency and/or the Nation. An operator, lessee, agent and/or other person may upon prior written approval of the Regulatory Agency and/or the Nation, at such person's own expense, drill and equip water wells on leased premises solely for the use of work/operations on such leased premises and shall upon termination of such work/operations, on such leased premises, leave all water producing wells intact and properly cased. If any such wells shall produce water surplus to the needs of the work/operations on such leased premises, such water shall be made available to the Nation.

(d) Injection; Spillage. Nothing herein authorizes, allows, or permits the injection of minerals of any kind or chemicals into any subsurface location, nor the spillage of such contaminants onto the land or in to the water.

(e) Antiquities. Compliance with all laws of the Nation and all federal laws that govern the treatment of antiquities shall be incorporated by reference and applied to this Code.

[History: Enacted by TO-2014-05, June 7, 2014.]



## **CHAPTER FIVE**

### **ENFORCEMENT, APPEALS AND EFFECTIVE DATE**

#### **Section 501. Enforcement**

(a) Notification of Violation. When the Regulatory Agency has reason to believe a violation of this Code or a violation of regulations issued by the Regulatory Agency pursuant to this Code has occurred, the Regulatory Agency shall notify in writing, specifying the alleged violations, the person believed to be in violation of this Code. The Regulatory Agency may withhold the name(s) of the complaining party if, in the sole opinion of the Regulatory Agency, such party could be subject to retaliation. The Regulatory Agency may seek to achieve an informal settlement or correction of the alleged violation, if such violation is a first-time occurrence or a lesser offense as solely determined by the Regulatory Agency. If the Regulatory Agency determines that an informal settlement or correction is not applicable, the Regulatory Agency shall issue a formal written notice of non-compliance to said person, which shall also advise the person of the violation, the civil penalty the Regulatory Agency is assessing, the deadline for compliance and/or payment of the civil penalty, and the person's right to request a hearing as provided herein.

(b) Formal Notice of Non-compliance. The formal written notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. Such notice shall provide the person with a reasonable time to comply, determined solely by the Regulatory Agency, which in no event shall be less than five (5) days from the date of receipt of such notice, unless the Regulatory Agency has reason to believe irreparable harm will occur during that period, in which case the Regulatory Agency may require that compliance occur within fewer than five days.

(c) Request for Hearing. If the person fails or refuses to comply, it may request a hearing before the Regulatory Agency which shall be held no sooner than five (5) days and no later than sixty (60) days after the date for compliance set forth in the Regulatory Agency's notification to the entity charged of a violation, unless an expedited hearing is deemed necessary by the Regulatory Agency to avoid irreparable harm. If the person fails or refuses to comply and does not request a hearing, the Regulatory Agency may proceed pursuant to Section 501(f).

(d) Bond during Pendency of Proceedings. If the entity requests a hearing pursuant to Section 501(c) herein, and the Regulatory Agency has good cause to believe that there is a danger that the person requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, the Regulatory Agency may, in its sole discretion, require the person to post a bond with the Regulatory Agency in an amount sufficient to cover possible monetary damages that may be assessed against the person at the hearing. If the person fails or refuses to post said bond, the Regulatory Agency may proceed pursuant to Section 501(f). The Regulatory Agency may also petition the Nation's District Court for such interim and injunctive relief as is appropriate to protect the rights of the Regulatory Agency and other parties during the pendency of the complaint and hearing proceedings.

(e) Conduct of Hearings. Any hearing held pursuant to Section 501 herein shall be conducted by the Regulatory Agency. Hearings shall be governed by the following rules or procedure:

- (1) All parties may present testimony of witnesses and other evidence and be represented by counsel at their expense.
- (2) The Regulatory Agency may have the advice and assistance at the hearing of counsel provided by the Nation.
- (3) The Chairman of the Regulatory Agency or the Vice-Chairman shall preside and the Regulatory Agency shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (4) The Regulatory Agency may consider any evidence which it deems relevant to the hearing, and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Regulatory Agency.
- (5) The Regulatory Agency shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Regulatory Agency.
- (6) The hearing may be adjourned, postponed and continued at the discretion of the Regulatory Agency.
- (7) At the final close of the hearings, the Regulatory Agency may take immediate action or take the matter under advisement.
- (8) In any hearing before the Regulatory Agency where the issue is compliance by an entity with any of the requirements and provisions of this Code, the burden of proof shall be on the person to show said compliance.
- (9) The Regulatory Agency shall notify all parties within thirty (30) days after the date of the last hearing of its decision in the matter.
- (10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the person requesting the hearing, but subject to prior approval by the Regulatory Agency.

(f) Remedies upon Determination of Violation. If, after the hearing, the Regulatory Agency determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Regulatory Agency may:

- (1) Deny such party the right to commence business within the territorial jurisdiction of the Seminole Nation;

- (2) Suspend such party's operation within the territorial jurisdiction of the Seminole Nation;
- (3) Terminate such party's operation within the territorial jurisdiction of the Seminole Nation;
- (4) Deny the right of such party to conduct any further business within the territorial jurisdiction of the Seminole Nation;
- (5) Impose a civil fine on such party in an amount not to exceed \$500 for each violation, provided that each day during which a violation exists shall constitute a separate violation;
- (6) Order the seizure of any property or interest therein in actual or constructive possession of a person that has violated or is violating any provision of this Code or of an operating permit and used in connection with that violation.
- (7) Order the party to take such other action as is necessary to ensure compliance with Title 3A, Title 4 and Title 28 of the Code of Laws of the Seminole Nation or to remedy any harm caused by a violation of said chapter, consistent with the requirements of the Indian civil Rights Act, 25 U.S.C. 1301, et seq.

(g) **Regulatory Agency Decision; Protection.** The Regulatory Agency's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty days after the close of the hearing provided in Section 501(e). Where the party's failure to comply immediately with the Regulatory Agency's orders may cause irreparable harm, the Regulatory Agency may move the Nation's District Court, and the District Court shall grant, such injunctive relief as necessary to preserve the Nation's rights, pending the party's appeal or expiration of the time for appeal.

[History: Enacted by TO-2014-05, June 7, 2014.]

## **Section 502. Appeals**

(a) **Manner of Taking Appeal.** An appeal to the Nation's District Court may be taken from any final order of the Regulatory Agency by any party adversely affected thereby. Said appeal must be filed with the Court no later than twenty (20) days after the party receives a copy of the Regulatory Agency's decision. The appeal shall be taken by serving a written notice of appeal with the Nation's District Court, with a copy to the Regulatory Agency, within twenty (20) days after the date of the entry of the order. The notice of appeal shall set forth the order from which appeal is taken; specify the grounds upon which reversal or modification of the order is sought; and be signed by the appellant.

(b) **Stay of Regulatory Agency Order Pending Appeal; Bond.** The order of the Regulatory Agency shall be stayed pending the determination of the Nation's District Court, provided that such stay may be conditioned upon the posting of a bond if the Regulatory Agency

petitions for a bond and the Court, for good cause shown, orders the appealing party to post a bond sufficient to cover monetary damages that the Regulatory Agency assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Regulatory Agency's order if that order is upheld by the Court.

(c) Standard of Review. The Nation's District Court shall uphold the decision of the Regulatory Agency unless it is demonstrated that the decision of the Regulatory Agency is arbitrary, capricious or in excess of the authority of the Regulatory Agency.

(d) Reversal on Appeal. If the order of the Regulatory Agency is reversed or modified, the Court shall by its mandate specifically direct the Regulatory Agency as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) Enforcement of Regulatory Agency Order. If the Regulatory Agency's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the Regulatory Agency's order, the Regulatory Agency shall petition the Nation's District Court and such Court shall grant such orders as are necessary and appropriate to enforce the orders of the Regulatory Agency and the civil penalties and/or sanctions imposed by it.

[History: Enacted by TO-2014-05, June 7, 2014.]

### **Section 503. Seizure of Property: Confiscation and Sale**

(a) Grounds for Seizure. Any property or interest therein in actual or constructive possession of a person that has violated or is violating any provision of this Code or an operating permit and used in connection with that violation may be seized and held to sure payment of a civil penalty or to be forfeited as provided in this Code. Seizure under this provision shall not require proof that the owner of the property or interest therein participated in, had knowledge of, or consented to the illegal use of the property.

(b) Authorization to Seize Property. Property subject to seizure under this Code may be seized by the Nation's Lighthouse or any other law enforcement office of the Nation upon issuance of a notice of violation or any order of the Regulatory Agency.

(c) Custody of Seized Property. Any property seized under this Code shall be held in the custody of the Regulatory Agency, subject only to the orders of the Nation's District Court, including without limitation, orders for sale of the property at public auction to collect any civil penalty assessed under this Code and orders issued in a forfeiture proceeding.

(d) Release of Property. Unless a forfeiture proceeding concerning the property seized under this Code is initiated as provided herein, such property shall be released to its owner upon the earliest of the following:

- (1) Sixty (60) days after seizure of the property;
- (2) Payment to the Regulatory Agency of the civil penalty for which the property was seized as security; or

- (3) Upon a finding by the Nation's District Court that such civil penalty is not proper.

(e) Civil Forfeiture. Following the seizure of any property under this Code, the Regulatory Agency may initiate an in rem judicial forfeiture proceeding against the seized property. The forfeiture complaint should describe with reasonable specificity the property at issue and the basis for forfeiture. The Regulatory Agency shall give written notice of forfeiture proceedings to all known or reasonably ascertainable persons with an interest in the seized property, including any lien holder. All such person shall answer the complaint and file any adverse claim to the property within twenty (20) days after notice of forfeiture proceedings is given. Upon notice of forfeiture proceedings to all interested persons as set forth above, the Nation's District Court shall conduct a hearing to adjudicate whether the property and/or any known interests therein have been forfeited to the Nation and shall enter an appropriate judgment. The Nation's District Court may deny forfeiture of an interest in property if the owner of the interest proves by clear and convincing evidence that he or she did not participate in, have knowledge of, nor consent to the illegal use of the property; or that he or she took all reasonable measures to prevent the illegal use of the property; or that the person committing the violation obtained the possession of the property without his or her consent. Property forfeited to the Nation and proceeds from the sale thereof shall be retained by the Regulatory Agency and used to equip and finance enforcement activities under this Code.

(f) Confiscation and Sale. If, twenty-one (21) days after a decision by the Regulatory Agency pursuant to Section 501(g), no appeal has been filed, or thirty (30) days after a decision by the Nation's District Court on an appeal from a decision by the Regulatory Agency pursuant to Section 502, a person has failed to pay monetary damages imposed on it or otherwise complied with an order of the Regulatory Agency or the Nation's District Court, the Regulatory Agency may petition the Nation's District Court to order the Nation's Lighthouse to confiscate, and hold for sale, such property of the person as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance, said petition shall be accompanied by a list of property belonging to the person which the Regulatory Agency has reason to believe is within the jurisdiction of the Nation's District Court, the value of which approximates the amount of monetary damages at issue. If the Nation's District Court finds the petition to be valid, it shall order the Nation's Lighthouse to confiscate and hold said property or as much as is available. The Nation's Lighthouse shall deliver in person or by certified mail, a notice to the person informing them/it of the confiscation and of their/its right to redeem said property by coming into compliance with the order outstanding against them/it. If thirty (30) days after confiscation the person has not come into compliance, the Nation's District Court shall order the Nation's Lighthouse to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Regulatory Agency and all costs incurred by the Nation's District Court and Lighthouse in the confiscation and sale. Any proceeds remaining shall be returned to the person, with the exception of proceeds from tobacco products confiscated pursuant to the requirements of Title 28 of the Code of Laws of the Seminole Nation, which shall be retained by the Nation and deposited in the Nation's General Fund.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 504. Powers of the Nation's Lighthouse and Orders of the Regulatory Agency**

The Nation's Lighthouse are hereby expressly authorized and directed to enforce all provisions of this Code, including but not limited to such cease and desist or related orders as may from time to time be properly issued by the Regulatory Agency and/or the Nation's District Court. Such orders do not require a judicial decree or order to render them enforceable. The Nation's Lighthouse shall not be civilly liable for enforcing such orders so long as the order is signed by the Regulatory Agency and/or the Nation's District Court.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 505. Action of the Regulatory Agency**

Except as provided herein, any action of the Regulatory Agency as provided in this Code may be carried out by the Board, Commission, and/or Director of the Regulatory Agency.

[History: Enacted by TO-2014-05, June 7, 2014.]

**Section 506. Effective Date**

This Code, and all provisions herein, shall become effective immediately on the date of approval by the General Council of the Seminole Nation of Oklahoma.

[History: Enacted by TO-2014-05, June 7, 2014.]

**TITLE 34**  
**SEAL CONTROL ACT OF 2019**  
**INDEX**

<b>TITLE 34 SEAL CONTROL ACT OF 2019 INDEX .....</b>	<b>i</b>
<b>TITLE 34 SEAL CONTROL ACT OF 2019 .....</b>	<b>1</b>
<b>CHAPTER ONE INTRODUCTION .....</b>	<b>1</b>
Section 101. Title.....	1
Section 102. Authority .....	1
Section 103. Findings .....	1
Section 104. Definitions .....	1
Section 105. Interpretation of Act .....	2
Section 106. Partial Repeal of Legislation.....	2
Section 107. Regulation of Seal .....	3
Section 108. Jurisdiction.....	3
Section 109. Regulatory Duties.....	3
<b>CHAPTER TWO LICENSING .....</b>	<b>4</b>
Section 201. License Required.....	4
Section 202. Exemptions .....	4
Section 203. Applications .....	4
Section 204. Licenses .....	5
<b>CHAPTER THREE UNLAWFUL ACTIONS, ENFORCEMENT AND PENALTIES ....</b>	<b>6</b>
Section 301. Unlawful Actions .....	6
Section 302. Enforcement .....	6
Section 303. Penalties .....	6

**TITLE 34**  
**SEAL CONTROL ACT OF 2019**

**CHAPTER ONE**  
**INTRODUCTION**

**Section 101. Title**

This Act shall be cited as the “Seal Control Act of 2019.”

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**Section 102. Authority**

The General Council is empowered to enact this Act pursuant to the Constitution of the Seminole Nation, Art. V, Sec. (a).

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**Section 103. Findings**

The General Council finds that:

(a) the Seal is a vital tool for the Seminole Nation, and it is used in a variety of ways, such as being used as an identifier of the Seminole Nation on official government correspondence;

(b) from time-to-time a Person, without authorization, will affix the Seal to a form of correspondence and presented to the public as if the Seminole Nation is making a statement; and

(c) to preserve the legitimacy of the Seminole Nation, the General Council wishes to impose an obligation on a Person who uses the Seal to obtain permission and provide for enforcement of the unauthorized actions of a Person.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**Section 104. Definitions**

As used in this Act, unless the context otherwise requires, the term:

(a) "Act" means this Title 34 of the Seminole Nation Code of laws.



(b) "Applicant" means a Person who is going through the Application process.

(c) "Application" means the forms provided by the Chief which shall be filled out to obtain a license.

(d) "Attorney General" means the attorney appointed by the General Council.

(e) "General Council" means the Legislative body of the Seminole Nation of Oklahoma.

(f) "Governmental Activities" means official business conducted by the Seminole Nation.

(g) "License" means a revocable privilege granted by the office of Chief to do an act or series of acts, which without permission, would be unlawful under this Act.

(h) "Licensee" means the holder of a License issued by the office of Chief.

(i) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity to which this Act can be applied.

(j) "Chief" means the Chief of the Seminole Nation of Oklahoma.

(k) "Seal" means the official seal of the Seminole Nation which is used to verify official documents.

(l) "Seminole Nation" means the office of Chief and the General Council.

(m) "Tribal Court" means the judicial power of the Seminole Nation of Oklahoma.

(n) "Tribal Prosecutor" means the official in charge of bringing legal proceedings on behalf of the Seminole Nation for violation of Seminole laws.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

#### **Section 105. Interpretation of Act**

The provisions of this Act, being necessary for the welfare of the Seminole Nation and its inhabitants, shall be liberally construed in favor of the Seminole Nation.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

#### **Section 106. Partial Repeal of Legislation**

This Act revokes, supersedes, and replaces language in Seminole Nation Ordinance 76-1 limited to references for the use of the Seal.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**Section 107. Regulation of Seal**

All rights to use the Seal of the Seminole Nation are reserved exclusively to the Seminole Nation for use in the course of Governmental Activities.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**Section 108. Jurisdiction**

This Act shall apply to any Person within or outside of the exterior boundaries of the Seminole Nation who uses the Seal. If the Tribal Court does not have jurisdiction over a Person, the Seminole Nation may pursue any remedy afforded by federal law for the protection of the Seal.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**Section 109. Regulatory Duties**

The General Council hereby delegates the authority to the office of the Chief, to monitor and enforce the provisions of this Act.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

## **CHAPTER TWO LICENSING**

### **Section 201. License Required**

Every Person desiring to use the Seal shall be required to obtain a License.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

### **Section 202. Exemptions**

The following shall not be required to obtain a License:

- (a) the Seminole Nation or its agencies;
- (b) a Person in possession of an object which was privately produced for a use which is non-commercial and non-communicative; and
- (c) all ceremonial or religious items to the Seminole Nation.

If a Person is exempted from licensing, aside from receiving a License, such Person is still required to comply with the requirements of this Act.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

### **Section 203. Applications**

(a) Required Information. At a minimum, the office of the Chief shall require a Person to provide the following:

- (1) a complete description of how the Seal will be used;
  - (2) the dates the Seal is expected to be used;
  - (3) a written promise by Applicant to not permit any third-party to use the Seal for any reason;
  - (4) the application fee as determined by the office of the Chief; and
  - (5) any additional information as required by the office of the Chief.
- (b) The office of the Chief shall establish application forms and submissions requirements.

(c) The office of the Chief shall be the sole decision maker on whether to grant a License.

(d) The decision regarding an Application by the Office of the Chief is final. A Person shall not have recourse against the Seminole Nation for any decision made by the office of the Chief.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

#### **Section 204. Licenses**

(a) Term. A License issued pursuant to this Act shall be valid for a term decided on a case-by-case basis by the office of the Chief but shall not exceed one (1) year.

(b) Assignability. A License issued pursuant to this Act is valid only for the named Licensee. A Licensee is prohibited from transferring or assigning a License.

(c) A Licensee shall abide by any regulations or policies and procedures established by the office of the Chief.

(d) A License issued pursuant to this Act is not a property right, therefore, the office of the Chief may revoke a License for any reason.

(e) A Licensee shall cease and/or desist use of the Seal Immediately upon the revocation, termination, expiration or suspension of a License.

(f) The decision regarding a License by the office of the Chief is final. A Person shall not have recourse against the Seminole Nation for any decision made by the office of the Chief.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

### **CHAPTER THREE UNLAWFUL ACTIONS, ENFORCEMENT AND PENALTIES**

#### **Section 301. Unlawful Actions**

It shall be unlawful for a Person to

- (a) fail to comply with any requirement under this Act;
- (b) use the Seal in any manner without a License; or
- (c) alter the Seal in any manner.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

### **Section 302. Enforcement**

- (a) The office of the Chief may take necessary action to enforce this Act, including:
  - (1) issuing a denial of an Application or revoking a License;
  - (2) requesting the Attorney General to draft a letter to Person to cease and desist committing unlawful actions;
  - (3) filing a civil lawsuit within the Tribal Court; or
  - (4) requesting of the Tribal Prosecutor to file criminal charges in the Tribal Court.
- (b) The General Council may take necessary action to enforce this Act, including:
  - (1) requesting the Attorney General to draft a letter to Person to cease and desist committing unlawful actions;
  - (2) filing a civil lawsuit within the Tribal Court; or
  - (3) requesting of the Tribal Prosecutor to file criminal charges in the Tribal Court.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

### **Section 303. Penalties**

- (a) Civil. The office of the Chief and the General Council have standing to file a civil lawsuit in Tribal Court. If the Tribal Court does not have jurisdiction over a Person, the Seminole Nation may pursue any remedy afforded by federal law.
- (b) Criminal. Should the Tribal Prosecutor determine a Person acted unlawfully under this Act with a culpable mental state greater than negligence, the Tribal Prosecutor may file criminal charges in the Tribal Court.
- (c) Tribal Court. Should a case be properly brought before the Tribal Court pursuant to this Act, the Tribal Court may:
  - (1) deny an Application or revoke a License; or
  - (2) provide relief consistent with remedies available under this Act, the Constitution of the Seminole Nation, the Seminole Nation Code of Laws or any other applicable law.

(d) Limitation on Jurisdiction. Nothing in this Act shall be construed as a waiver of the Seminole Nation's sovereign immunity.

[HISTORY: Enacted by TO 20-10, March 7, 2020.]

**TITLE 35**  
**SEMINOLE HEMP CULTIVATION REGULATORY CODE**

*A law to authorize, license and regulate Hemp Cultivation within the jurisdiction of the  
Seminole Nation of Oklahoma*

**INDEX**

<b>TITLE 35 SEMINOLE HEMP CULTIVATION REGULATORY CODE INDEX .....</b>	<b>i</b>
<b>TITLE 35 SEMINOLE HEMP CULTIVATION REGULATORY CODE.....</b>	<b>1</b>
<b>CHAPTER ONE General Provisions .....</b>	<b>1</b>
Section 101. Findings .....	1
Section 102. Intent .....	1
Section 103. Definitions .....	2
Section 104. Compliance with Title 35 and Federal law .....	3
<b>CHAPTER TWO Seminole Hemp Commission .....</b>	<b>5</b>
Section 201. Establishment .....	5
Section 202. Place of Business.....	5
Section 203. Duration .....	5
Section 204. Commission Appointment .....	5
Section 205. Commissioner Qualifications.....	6
Section 206. Removal of Commissioner; Vacancy .....	6
Section 207. Powers of the Commission .....	7
Section 208. Duties of the Commission .....	7
<b>CHAPTER THREE Hemp Cultivation License.....</b>	<b>13</b>
Section 301. License Required.....	13
Section 302. Application.....	13
Section 303. Issuance of License .....	13
<b>CHAPTER FOUR Hemp Cultivation Licensee .....</b>	<b>14</b>
Section 401. Duties.....	14
<b>CHAPTER FIVE Violations .....</b>	<b>18</b>
Section 501. Negligent Violations.....	18
Section 502. Violations with Culpable Mental State Greater than Negligence .....	19

**TITLE 35**  
**SEMINOLE HEMP CULTIVATION REGULATORY CODE**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Findings**

As provided in Section 297(B)(a)(1) of the Agriculture Improvement Act of 2018 (the “Farm Bill”), an “Indian tribe desiring to have primary regulatory authority over the production of hemp in the... territory of the Indian tribe shall submit to the Secretary [of Agriculture], through the... Tribal government... a plan under which the... Indian tribe monitors and regulates that production as described in paragraph (2). In that regard, the General Council of the Seminole Nation of Oklahoma, a federally-recognized Indian Tribe, the primary governing body of the Nation, finds:

- (a) the Nation desires to exercise primary regulatory authority over Hemp Cultivation within the Nation’s jurisdiction pursuant to Tribal law and applicable federal law;
- (b) the Nation desires to expedite the development of the Nation’s economy in order to improve the Nation’s economic self-sufficiency by enabling the Nation to better serve the social, economic, educational, and health and safety needs of its members and visitors;
- (c) Hemp Cultivation is a legitimate means of generating revenue to pursue the Nation’s goals of self-sufficiency and self-determination;
- (d) the Nation has the legal authority to license and regulate Hemp Cultivation within its jurisdiction; and
- (e) regulation and control of Hemp Cultivation within the jurisdiction of the Nation is essential for the protection of the public welfare.

[HISTORY: Enacted by TO 20-11, September 5, 2020.]

**Section 102. Intent**

The General Council, on behalf of the Nation, declares the intent of Title 35 is to:

- (a) diversify and expedite the development of the economy of the Nation for the purposes described above; and
- (b) define general regulatory powers to be exercised by the Seminole Hemp Commission in relation to the regulation, control, and oversight of Hemp Cultivation.



[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

### **Section 103. Definitions**

**“Acceptable Hemp THC Level”** means when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The Acceptable Hemp THC Level for the purpose of compliance with the requirements of this hemp plan is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.45% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of compliance. This definition of Acceptable Hemp THC Level affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the Controlled Substances Act.

**“AMS”** means the United States Department of Agriculture Agricultural Marketing Service.

**“Applicant”** means any person who has applied for a License under the provisions of this Code.

**“Application”** means the request for an issuance of a License under the provisions of this Code.

**“Business day”** means any calendar day except Saturday, Sunday, and any federal holiday.

**“Chief”** means the Chief of the Seminole Nation of Oklahoma.

**“Commission”** means the Seminole Hemp Commission, created and established by the General Council and charged with the implementation and enforcement of Title 35.

**“Corrective Action Plan”** means the plan set forth by the Commission to correct a negligent violation in accordance with Section 501 of Title 35.

**“DEA”** means the U.S. Drug Enforcement Administration.

**“Dry Weight Basis”** means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance.

**“FSA”** means the United States Department of Agriculture Farm Service Agency.

**“General Council”** means the General Council of the Seminole Nation of Oklahoma.

**“Hemp”** means the plant *Cannabis sativa* L. and any part of that plant, whether growing or not, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

**“Hemp Cultivation”** means planting and growing Hemp.

**“Key Participant”** is a person who have a direct or indirect financial interest in the entity producing Hemp, such as an owner or partner in a partnership. A Key Participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include management as farm, field or shift managers.

**“License”** means the official and legal privilege and authority, granted by the Commission to a Licensee to conduct Hemp Cultivation.

**“Licensee”** means any Person licensed by the commission to cultivate Hemp.

**“Lot”** means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “Lot” is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this plan, “Lot” is to be defined by the Licensee in terms of farm location, field acreage, and variety (i.e., cultivar) and to be reported as such to the FSA.

**“Plant”** means all parts of the plant *Cannabis Sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

**“Secretary”** means the Secretary of Agriculture.

**“USDA”** means the United States Department of Agriculture.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

#### **Section 104. Compliance with Title 35 and Federal Law**

Nothing in this Title 35 shall be construed as a waiver of the Nation’s sovereign immunity. Adoption of the Title 35 does not prohibit the General Council enacting additional regulations consistent with or more stringent than Title 35.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

## **CHAPTER TWO**

### **SEMINOLE HEMP COMMISSION**

#### **Section 201. Establishment**

The General Council hereby establishes the Commission as a governmental subdivision of the Nation, charged with implementation of Title 35 and regulation of Hemp Cultivation.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

#### **Section 202. Place of Business**

The Commission may establish places of business in any location the Commission determines to be in the best interest of the Nation.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

#### **Section 203. Duration**

The Commission shall have perpetual existence and succession in its own name, unless dissolved by the General Council.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

#### **Section 204. Commission Appointment**

- (a) Commissioner Term of Office. The Commission shall be governed by a total of five (5) commissioners. Each commissioner shall be appointed by the Chief and confirmed by the General Council.
- (b) Term. The commissioner shall serve for three (3) years from the date confirmed by the General Council.
- (c) Compensation. The compensation of the commissioner shall be established from time to time by the General Council and may receive reimbursement for actual and necessary travel, per diem, and lodging expenses incurred in the performance of their official duties as commissioners.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

## **Section 205. Commissioner Qualifications**

To be qualified for appointment as a commissioner, a candidate shall meet the following qualifications:

- (a) the candidate shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent;
- (b) the candidate shall have expertise, experience, education or a combination thereof in Hemp cultivation along with any other farming practices; and
- (c) no person may serve as commissioner if:
  - (1) the person's prior activities, criminal record, if any, or reputation, habits or associations: (i) Pose a threat to the public interest; or (ii) Threaten the effective regulation;
  - (2) the person has been convicted of or entered a plea of no contest to any crime involving breach of trust or dishonesty in any jurisdiction; or
  - (3) the person, or any member of his or her Immediate Family, has a partnership or other direct monetary or financial interest in the conduct of any Licensee or is in privity with a Licensee or one of its agents, contractors, or sub- contractors; or if the candidate has another personal or legal relationship that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings. A candidate must disclose any potential conflict caused through an Immediate Family member. After disclosure, a conflict may be waived by the General Council provided that appropriate safeguards are put in place to ensure impartiality.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

## **Section 206. Removal of Commissioner; Vacancy**

- (a) Removal. A commissioner may be removed by the General Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of Hemp Cultivation, the Commission or violates the Title 35.
- (b) Vacancy. If there is a vacancy on the Commission, the Chief shall appoint another qualified person to fill the position and confirmed by the General Council. The term of office of the person appointed to fill the vacancy shall be for the balance of the unexpired term for the position.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

**Section 207. Powers of the Commission**

- (a) Inspections. The Commission may conduct random inspections of Licensees and Lots to verify compliance with Title 35 and applicable federal laws. If the Commission conducts a random inspection, it must do so in accordance with 208(g) of Title 35.
- (b) Regulations. The Commission may promulgate regulations subject to General Council approval.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

**Section 208. Duties of the Commission**

- (a) Applications. The Commission shall create Applications which at a minimum shall require the following information:
  - (1) Contact Information.
    - i. Applicant that is an individual shall include full name, business Address telephone number, and email address.
    - ii. Applicant that is an entity shall include full name of the entity, the principal business location address, and the full name, title, EIN number and email address of each Key Participant of the entity.
  - (2) Location.
    - i. Street address, legal description of land and geospatial location for each Lot where Hemp will be produced. Information shall be provided for all sites if an Applicant operates in more than one location.
    - ii. Acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of Hemp.
  - (3) Criminal History Report. If the Applicant is a business entity, a Criminal History Report shall be provided for each Key Participant.
    - i. Submission of current Federal Bureau of Investigation's Identity History Summary ("Criminal History Report").

- ii. The Criminal History Report must be dated within sixty (60) days of submission of the Application.
  - iii. Any person convicted of a felony relating to a controlled substance within any jurisdiction of the United States of America before, on, or after the date of the enactment of this Plan shall be ineligible, during the ten (10) year period following the date of the conviction to participate in this Plan and produce hemp under this Plan, unless that Person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose felony conviction occurred before December 20, 2018.
  - iv. If the Licensees are entities, then only the Key Participants shall be subject felony conviction requirements described in Section 208(a)(3)(iii) of Title 35 if they participate in the business operations of the Licensee.
  - v. The Applications shall require a signed statement from the Applicant agreeing to comply with License requirements.
- (b) Licenses. The Commission shall assign all Licensees with a license or authorization identifier in a format prescribed by the USDA.
- (c) Sampling.
- (1) Upon notification by Licensee, Commission shall have an approved official selected by the Commission collect samples from the flower material of such cannabis material for delta-9 tetrahydrocannabinol concentration level testing.
  - (2) The Commission approved official collecting the samples shall provide a certificate to the Licensee and Commission certifying the method used for sampling the flower material of the cannabis plant was sufficient at a confidence level of 95% that no more than 1% of the plants in the Lot would exceed the Acceptable Hemp THC Level.
  - (3) The Commission approved official shall certify that the method used for sampling ensured the collection represents a homogeneous composition of the Lot.

- (4) Upon providing sampling certification to the Licensee, the Commission approved official shall transport the sample to a DEA registered testing laboratory.

(d) Testing.

- (1) The Commission shall transport the sample to a testing laboratory that is registered by the DEA.
- (2) The Commission shall ensure the testing is completed by the laboratory using post-decarboxylation where the total THC concentration level reported accounts for the conversion of delta-9 tetrahydrocannabinol acid (“THCA”) into THC. Testing methodologies meeting the requirements of this paragraph include, but are not limited to, gas or liquid chromatography with detection.
- (3) The Commission shall ensure the DEA registered testing laboratory reports the results of the test which converts the THCA to determine the THC content.
- (4) The Commission shall ensure the THC concentration levels are determined and reported by the DEA registered testing laboratory on a dry weight basis.
- (5) The Commission shall ensure all analytical testing shall meet the following standard:
  - i. laboratory quality assurance must ensure the validity and reliability of test results;
  - ii. analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;
  - iii. the demonstration of testing validity must ensure consistent, accurate analytical performance;
  - iv. method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Plan; and
  - v. measurement of uncertainty shall be estimated and reported with test results;
  - vi. laboratories shall appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty; and



vii. any laboratory used under this Title 35 must have an effective destruction procedure in accordance with 21 C.F.R. § 1317.15 for samples that exceed the Acceptable Hemp THC Level.

(e) Recordkeeping. The Commission shall:

- (1) maintain records of all information gathered by Applicants under Section 302 for at least three (3) years;
- (2) keep all findings under Section 208(f) for at least three (3) years; and
- (3) retain all reports submitted by Licensee under Section 401(h) for a period of at least three (3) years.

(f) Inspections. The Commission shall conduct:

- (1) an annual inspection of Licensees and all Lots to verify compliance with the Acceptable Hemp THC Level.
  - (i) Inspections shall be conducted on a Business Day at any time during regular business hours.
  - (ii) Samples collected become the property of the Nation and no compensation shall be owed to the Licensee.
  - (iii) Test Results must be kept for a minimum of three (3) years.
- (2) inspections of Licensees found to have negligently violated Title 35 according to Section 501(a) to ensure the Licensee's compliance with the corrective action plan produced by the Commission according to Section 501(b).

(g) Reporting.

- (1) Licensee Report. The Commission shall submit to USDA prior to the first business day of each month a report providing the contact information and the status of the license issued for each Licensee. The Licensee Report shall contain the following:
  - i. each new licensee who is an individual and is licensed by the Commission shall include full name of the individual, license number, business address, legal description of land where hemp is being produced, telephone number, and email address;

- ii. each new Licensee that is an entity licensed by the Commission shall include full name of the entity, the principal business location address, license number, and the full name, title, EIN number and email address of each Key Producer who is required to submit a criminal history report;
  - iii. for each Licensee that was included in a previous report and whose reported information has changes, the report shall include the previously reported information and the new information;
  - iv. the status of each Licensee;
  - v. the time period covered by the Licensee Report; and
  - vi. the Licensee Report shall include whether there were no changes during the current reporting cycle, if applicable.
- (2) Hemp Disposal Report. The Commission shall submit to USDA prior to the first business day of each month a report notifying USDA of non-conforming Plants. The Hemp Disposal Report Shall contain all the required information under Section 401(f)(2).
- (3) Test Results Report. Upon receiving the Test Results Report required under Section 401(d)(1), the Commission shall promptly notify the USDA by certified mail or electronically of any occurrence of Plants that do not meet the Acceptable Hemp THC Level and attach the records demonstrating the appropriate disposal of all of those plants and materials in the Lot which the representative samples were taken.
- (4) Annual Report. The Commission shall submit an Annual Report to USDA by December 15 of each year. The Annual Report shall contain the following:
- (i) total planted acreage;
  - (ii) total harvested acreage;
  - (iii) total acreage disposed; and
  - (iv) all Test Results Reports for the year.
- (h) Information Sharing. The Commission shall submit to the USDA the information received under Section 401(i) not more than thirty (30) days after it was received and in a format compatible with USDA's information sharing system.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

## **CHAPTER THREE**

### **HEMP CULTIVATION LICENSE**

#### **Section 301. License Required**

Any person producing or intending to produce Hemp within the Nation's jurisdiction shall obtain a License from the Commission.

[HISTORY: Enacted by TO 20-11, September 5, 2020.]

#### **Section 302. Application**

- (a) Any Person may submit an application to the Commission. The Application will be used for both new Applicants and Licensees seeking renewal of their License.
- (b) Applicants shall submit Applications to the Commission.
- (c) Any Applicants who materially falsify any information in the Application shall be automatically deemed ineligible to participate as a Licensee.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

#### **Section 303. Issuance of License**

- (a) Licenses shall be valid until December 31 of the year, three (3) years after the License was issued.
- (b) A License is a revocable privilege to conduct Hemp Cultivation from within the Nation's jurisdiction.
- (c) A License issued pursuant to Title 35 is non-transferable or assignable unless approved in writing by the Commission.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

## **CHAPTER FOUR HEMP CULTIVATION LICENSEES**

### **Section 401. Duties**

(a) Inspections. The Licensee shall grant the Commission unrestricted access during any inspections.

(b) Compliance. Licensees shall conduct business in a manner consistent with this Title 35 and with all applicable federal law including but not limited to the Agriculture Improvement Act of 2018.

(c) Sampling.

(1) Within fifteen (15) days prior to the anticipated harvest of Plants, Licensee shall schedule a Commission approved official to collect samples from the flower material of such cannabis material for delta-9 tetrahydrocannabinol concentration level testing.

(2) Licensee shall provide the Commission approved official and their agents complete and unrestricted access during business hours to all Plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling and storage of all Hemp and other Plants, and all Licensee locations.

(3) Licensee or an authorized representative of the Licensee shall be required to be present at the sampling.

(d) Testing.

(1) For each sample tested pursuant to this Section 208(d), the Licensee shall obtain from a laboratory a certification ("Test Results Report") to provide to the Commission, which at a minimum, shall include the following:

i. Licensee's license number;

ii. name of Licensee;

iii. Licensee address;

iv. legal description of land where Hemp is produced;

v. Lot identification number for the sample;

- vi. name and DEA registration number of the laboratory;
  - vii. general information identifying that the Hemp that is the subject of the certificate of analysis is the product of a sample tested by the DEA registered laboratory;
  - viii. the date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;
  - ix. the THC concentration contained in the test sample; and
  - x. a statement indicating whether the sample contained a THC concentration of not more than the Acceptable Hemp THC Level.
- (2) At the Licensees expense, any Licensee may request additional testing if it is believed that the original delta-9 tetrahydrocannabinol concentration level test results were in error.

(e) Harvesting.

- (1) Lots that meet the Acceptable Hemp THC Level may enter the stream of commerce.
- (2) Licensee shall harvest Plants within fifteen (15) days following the date of sample collection.
- (3) If Licensee fails to complete harvest within fifteen (15) days of sample collection, a secondary pre-harvested sample of the Lot shall be required to be submitted for testing.
- (4) Licensee may not commingle hemp from one Lot with hemp in another Lot absent receiving written permission from the USDA to commingle Lots.
- (5) A harvest of any cannabis may not occur prior to samples being taken.

(f) Destruction of Non-Compliant Plants.

- (1) Plants that test higher than the acceptable Hemp THC Level shall be considered non-compliant plants and be disposed of by the Licensee in compliance with Title 35 and in accordance with the Controlled Substances Act and DEA regulations found at 21 CFR 1317.15..

(2) A Hemp Disposal Report must be submitted to the Commission no later than thirty (30) days after the date of completion of the disposal. The Hemp Disposal Report shall include:

- i. name and address of Licensee;
- ii. Licensee's license number;
- iii. location information, such as Lot number, legal description, location type, and geospatial location or other valid land descriptor for the production area subject to disposal;
- iv. total acreage;
- v. information on the agent handling the disposal;
- vi. date of the completion of the disposal;
- vii. signature of the Licensee; and
- viii. agent certification of the completion of the disposal.

(3) All costs associated with destruction shall be the responsibility of the Licensee.

(g) Recordkeeping.

(1) Licensee Recordkeeping. Licensees shall maintain the following records and reports for at least three (3) years:

- i. records regarding the acquisition of Hemp plants;
- ii. records regarding production and handling of Hemp plants;
- iii. records regarding storage of Hemp plants;
- iv. Test Results Report; and
- v. Hemp Disposal Report.

(2) Records under Section 401(g)(1) shall be made available for inspection by the Commission.

(h) Reporting.

(1) Hemp Disposal Report. The Licensee shall promptly send the Hemp Disposal Report to the Commission pursuant to Section 401(f)(2).

(2) Test Results Report. Upon receiving the Test Results Report, the Licensee shall promptly send the Test Results Report to the Commission pursuant to Section 401(d)(1).

(i) Information Sharing. Licensees shall submit to the Commission and the FSA the following information:

(1) all hemp crop acreage information as required under Section 208(a)(2);

(2) the license number issued to the Licensee by the Commission;

(3) the total acreage of hemp planted, harvested, and, if applicable, disposed by the Licensee.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]



## CHAPTER FIVE VIOLATIONS

### Section 501. Negligent Violations

- (a) A Licensee shall be subject to enforcement for negligently:
  - (1) failing to provide a legal description of land on which the Licensee cultivates hemp;
  - (2) failing to obtain a license or other required authorization from the Commission as applicable; or
  - (3) producing *Cannabis sativa* L. with a THC concentration of more than the Acceptable Hemp THC Level, unless the Licensee made a reasonable attempt to grow Hemp and the THC level did not exceed 0.5 percent on a dry weight basis.
- (b) For each negligent violation committed by a Licensee, the Commission shall require a corrective action plan for the Licensee to cure the negligent violation. The Licensee shall comply with the corrective action plan required by the Commission. At a minimum the Commission shall require the corrective action plan to be in place for two (2) years. Until the corrective action plan is terminated, a Licensee shall be subject to random inspections by the Commission to determine if corrective action has been implemented by the Licensee. The Commission's corrective action plans shall:
  - (1) provide a date by which the Licensee shall correct the negligent violation;
  - (2) include steps required by the Commission to correct each negligent violation; and
  - (3) require the Licensee to provide a description of procedures to the Commission to demonstrate compliance with the required corrective action plan.
- (c) A Licensee that negligently violates this Plan according to Section 501(a) shall not, as a result of that violation, be subject to any criminal enforcement action by the Federal Government or any State government, Tribal government, or local government.

- (d) If a Licensee commits a subsequent violation while the corrective action plan is in place, the Commission shall require the Licensee to maintain a heightened level of quality control, require staff training and take quantifiable action measures.
- (e) A Licensee that negligently violates Title 35 according to Section 501(a) three (3) times in a five (5)-year period shall be ineligible to produce Hemp within the territory of the Nation for a period of five (5) years beginning on the date of the third violation.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

**Section 502. Violations with Culpable Mental State Greater than Negligence**

- (a) If the Commission determines that a Licensee has violated this Plan with a culpable mental state greater than negligence, the Commission shall immediately report the Licensee to:
  - (1) the United States Attorney General; and
  - (2) Seminole Nation of Oklahoma Lighthorse
- (b) Sections 501(a) and 501(b) shall not apply to violations where the culpable mental state is greater than negligence.

[HISTORY: Enacted by TO 2020-11, September 5, 2020.]

**TITLE 36**  
**GAME AND FISH**

*A law to authorize, license and regulate the taking of wildlife within the jurisdiction of  
the Seminole Nation of Oklahoma*

**INDEX**

<b>TITLE 36 GAME AND FISH CODE INDEX .....</b>	<b>i</b>
<b>CHAPTER ONE General Provisions .....</b>	<b>2</b>
Section 101. Title.....	2
Section 102. Statement of Policy .....	2
Section 103. Definitions .....	2
<b>CHAPTER TWO Game and Fish Department.....</b>	<b>4</b>
Section 201. Establishment .....	4
Section 202. Director .....	5
<b>CHAPTER THREE Taking Wildlife.....</b>	<b>7</b>
Section 301. Permit Required .....	7
Section 302. Issuance of Permit .....	7
Section 303. Prohibited Activities.....	7
<b>CHAPTER FOUR Enforcement.....</b>	<b>9</b>
Section 401. Notice.....	9
Section 402. Confiscation of Contraband .....	9
Section 402. Fees and Penalties .....	9

**TITLE 36  
GAME AND FISH**

**CHAPTER ONE  
GENERAL PROVISIONS**

**Section 101. Title:**

This Title 36 shall be cited as the Seminole Nation of Oklahoma Game and Fish Code.

[HISTORY: Enacted by TO 20-15 January 28, 2021.]

**Section 102. Statement of Policy:**

Pursuant to the power vested in it by Article V, Section (a), (c), and (d) of the Constitution of the Seminole Nation of Oklahoma, the General Council of the Seminole Nation of Oklahoma, hereby enacts Title 36 for the following reasons:

- (a) to ensure proper management of resources of the Seminole Nation of Oklahoma Reservation by preserving the spiritual, cultural and economic value of Wildlife;
- (b) to exercise the inherent sovereign right to use and enjoy resources of the Seminole Nation of Oklahoma Reservation;
- (c) to regulate the use of Wildlife to protect the political integrity, economic security, and health and welfare of the Seminole Nation of Oklahoma;
- (d) to govern the use of resources by Members and Nonmembers to promote education, good will, and develop the economy of the Seminole Nation of Oklahoma while preserving and improving resources for future generations.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

**Section 103. Definitions:**

- (a) **“Big Game”** means any wild large animal species within the the Reservation which may or may not be Taken pursuant to Game and Fish Department regulations.
- (b) **“Chief”** means the Chief of the Seminole Nation of Oklahoma.
- (c) **“Director”** Official of the Seminole Nation of Oklahoma hired to oversee the Game and Fish Department.

- (d) **“Fish”** means any species found in the waterways within the Reservation which may or may not be Taken pursuant to Game and Fish Department regulations.
- (e) **“Game and Fish Department”** means the Seminole Nation of Oklahoma Game and Fish Department.
- (f) **“General Council”** means the General Council of the Seminole Nation of Oklahoma
- (g) **“Member”** means a person who is an enrolled member of the Seminole Nation of Oklahoma.
- (h) **“Nonmember”** means a person who is not an enrolled member of the Seminole Nation of Oklahoma.
- (i) **“Permit”** means the official and legal privilege, granted by the Game and Fish Department to Take Wildlife.
- (j) **“Reservation”** means the Seminole Nation of Oklahoma Reservation.
- (k) **“Small Game”** means any wild small animal species or birds within the the Reservation which may or may not be Taken pursuant to Game and Fish Department regulations.
- (l) **“Take”** means pursuing, shooting, shooting at, hunting, trapping, netting, snaring, fishing, killing, capturing, or attempting any of the foregoing.
- (m) **“Wildlife”** means all Big Game, Small Game, and Fish within the exterior boundaries of the Reservation.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

## **CHAPTER TWO GAME AND FISH DEPARTMENT**

### **Section 201. Establishment:**

The General Council hereby establishes the Game and Fish Department as a governmental subdivision of the Nation, charged with implementation of Title 36 and regulation of Taking Wildlife.

#### **(a) Powers.**

- (i) *Intergovernmental Agreements.* The Game and Fish Department may enter into cross-deputization agreements, conservation management agreements, or other cooperative agreement with tribal, federal, state or local governments subject to General Council approval.
- (ii) *Acquire Funding.* The Game and Fish Department may apply for and receive financial assistance subject to General Council Approval.

#### **(b) Duties.**

- (i) *Applications.* The Game and Fish Department shall create applications for Permits.
- (ii) *Permits.* The Game and Fish Department shall issue Permits which at a minimum shall include the following:
  - (A) Name of Permit holder;
  - (B) Date of Birth of Permit holder;
  - (C) Date of Issuance;
  - (D) Date of Expiration; and
  - (E) Species authorized to be Taken.
- (iii) *Publications.* The Game and Fish Department shall prepare and, as often as necessary, revise publications which provide the public within information on Permits, seasons, bag limits, fines, penalties, and other Game and Fish Department regulations.
- (iv) *Safety.* Establish safety requirements.

- (v) *Seasons.* Establish a schedule when a certain species may lawfully be Taken.
- (vi) *Bag and Size Limits.* Establish a maximum amount of a species that may be Taken and a minimum size of a species that may be Taken.
- (vii) *Taking Areas.* Establish locations where Taking may lawfully occur and areas that are restricted.
- (viii) *Firearm Transportation.* Establish regulations for transporting firearms.
- (ix) *Device.* Establish regulations for devices which may be used for Taking.
- (x) *Bait, Calls and Decoys.* Establish regulations for types of items which may be used to assist in attracting Wildlife.
- (xi) *Information Sharing.* Work with the Seminole Nation Lighthouse with investigations and searches of missing or wanted persons.
- (xii) *Violations.* Investigate and enforce violations of Title 36.
- (xiii) *Civil Violations.* Establish regulations for imposing fines for civil violations.
- (xiv) *Criminal Violations.* Establish regulations to handle criminal violations.
- (xv) *Bank Account.* Deposit all monies received for Permits, fines, and other sources to a Bank Account controlled by the Treasurer of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

**Section 202. Director:**

- (a) Appointment. The Director shall be hired by the Chief to serve as a full time employee within the Office of the Chief under the of the Seminole Nation of Oklahoma.
- (b) Qualifications. To be qualified to serve as Director, a candidate shall meet the following qualifications:
  - (i) the candidate shall be at least twenty-one (21) years of age and show proof of receiving a High School Diploma or equivalent; and
  - (ii) the candidate shall have expertise, experience, education or a combination thereof in protection, conservation, and management of Wildlife.

(c) Removal. The Chief may remove the person hired as Director for any reason.

(d) Duties.

- (i) *Management of Game and Fish Department.* The Director shall oversee the hiring and firing of Game and Fish Department personnel.
- (ii) *Budget.* Prepare an annual budget and present to the General Council for approval.
- (iii) *Reporting.* Provide quarterly reports to the General Council.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]



## **CHAPTER THREE TAKING WILDLIFE**

### **Section 301. Permit Required:**

Except as otherwise provided by Title 36, no person may Take Wildlife without a valid Permit authorizing the Taking.

- (a) Big Game. Any person Taking Big Game shall purchase a Permit for each species and comply with regulations issued by the Game and Fish Department. Any person between the age of fourteen (14) and eighteen (18) must acquire a Permit and be accompanied by a Permit holder over the age of eighteen (18).
- (b) Small Game. Any Nonmember Taking Small Game shall purchase a Permit for each species and comply with regulations issued by the Game and Fish Department. Members are exempt from acquiring a Permit for Taking Small Game but shall comply with regulations issued by the Game and Fish Department. A Nonmember under the age of eighteen (18) must acquire a Permit and be accompanied by a Permit holder or Member over the age of eighteen (18).
- (c) Fish. Any Nonmember Taking Fish shall purchase a Permit and comply with regulations issued by the Game and Fish Department. Members are exempt from acquiring a Permit for Taking Fish but shall comply with regulations issued by the Game and Fish Department. No Permit is required for any person under ten (10) years of age who is accompanied by a Permit holder or Member.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

### **Section 302. Issuance of Permit:**

- (a) A Permit is a revocable privilege to Take Wildlife.
- (b) A Permit issued pursuant to Title 36 is not transferable or assignable unless approved in writing by the Game and Fish Department.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

### **Section 303. Prohibited Activities:**

Except as otherwise permitted by Title 36, the following acts are unlawful within the exterior boundaries of the Reservation:

- (a) Taking Wildlife without a valid Permit;
- (b) Taking Wildlife in a restricted area;

- (c) Taking Wildlife between ½ hour after sunset and ½ before sunrise;
- (d) Taking Wildlife with the use of artificial light;
- (e) Taking Wildlife with an unauthorized device;
- (f) selling Wildlife Taken;
- (g) releasing any species into the wild;
- (h) failing to comply with bag limits and size requirements; and
- (i) failing to comply with any other rule or regulation promulgated by the Game and Fish Department.

## **CHAPTER FOUR ENFORCEMENT**

### **Section 401. Notice:**

All persons shall be notified of the jurisdiction of the Seminole Nation of Oklahoma by:

- (a) the posting of signs; and
- (b) and issuing Permits.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

### **Section 402. Confiscation of Contraband:**

Any item used for Taking or any Wildlife that has been Taken in violation of Title 36 is considered contraband and may be subject to confiscation.

[HISTORY: Enacted by TO 20-15, January 28, 2021.]

### **Section 403. Fees and Penalties:**

Any person in violation of Title 36 is subject to civil or criminal regulations promulgated under Section 201(b).

[HISTORY: Enacted by TO 20-15, January 28, 2021.]